

**COMPETITIVE CABLE TELEVISION FRANCHISE AGREEMENT  
BETWEEN THE CITY OF SAN DIEGO  
AND  
WESTERN INTEGRATED NETWORKS OF CALIFORNIA, OPERATING LLC.**

---

---

## CONTENTS

### RECITALS

### SECTION 1                      DEFINITIONS

1.1	Affiliate	1
1.2	Admin. Enforcement Order	1
1.3	Agency	2
1.4	Business Service Center	2
1.5	Cable Act	2
1.6	Cable Service	2
1.7	Cable System	2
1.8	CEQA	2
1.9	Channel	2
1.10	City	2
1.11	City Auditor	2
1.12	City Facility	2
1.13	City Manager	2
1.14	Complaint	2
1.15	Construction Plan	3
1.16	Construction Schedule	3
1.17	Construction Bond	3
1.18	Council	3
1.19	CPUC	3
1.20	Drop	3
1.21	Effective Date	3
1.22	Enforcement Hearing Officer	3
1.23	FCC	3
1.24	FCC Rules and Regulations	3
1.25	Force Majeure Event	3
1.26	Franchise Agreement	3
1.27	Franchise Fee	4
1.28	Grantee	4
1.29	Gross Revenues	4
1.30	Institutional Network	6
1.31	Master Implementation Plan	6
1.32	Normal Operating Conditions	6
1.33	Normal Business Hours	6
1.34	PEG Channels	6
1.35	PEG Private Access Channels	6
1.36	PEG Programmer	6
1.37	Person	6
1.38	Phasing Maps	7

1.39	Primary Processing Center .....	7
1.40	Programming Services .....	7
1.41	Provision .....	7
1.42	Public Right-of-Way .....	7
1.43	Public School .....	7
1.44	Security Fund .....	7
1.45	Service Interruption .....	7
1.46	Service Area .....	7
1.47	Subscriber .....	7
1.48	Video Programming .....	7
 <b><u>SECTION 2</u> GRANT OF CABLE TELEVISION FRANCHISE .....</b>		<b>7</b>
2.1	Franchise Grant .....	7
2.2	Acceptance of Franchise Agreement .....	8
2.3	Franchise Nonexclusive .....	8
2.4	Reservation of Rights .....	8
2.5	Force Majeure .....	9
 <b><u>SECTION 3</u> DESIGNATED SERVICE AREA .....</b>		<b>9</b>
3.1	Service Area .....	9
 <b><u>SECTION 4</u> FRANCHISE TERM .....</b>		<b>9</b>
4.1	Term .....	9
4.2	Termination .....	9
 <b><u>SECTION 5</u> MASTER IMPLEMENTATION PLAN/CEQA COMPLIANCE .....</b>		<b>10</b>
5.1	Master Implementation Plan .....	10
5.2	CEQA Compliance .....	10
5.3	Costs .....	10
 <b><u>SECTION 6</u> CONSTRUCTION OF NETWORK .....</b>		<b>10</b>
6.1	Construction Schedule .....	10
6.2	Construction Plans .....	11
6.3	Construction Bond .....	11
 <b><u>SECTION 7</u> MAPS .....</b>		<b>12</b>
7.1	Maps Required .....	12
 <b><u>SECTION 8</u> CONSTRUCTION PRACTICES .....</b>		<b>12</b>
8.1	Standards .....	12
8.2	No Burden on Public Right-of-Way .....	12
8.3	Restoration of Property .....	12
8.4	Relocation of Facilities .....	13

8.5	Joint Use .....	13
8.6	Private Property .....	13
8.7	Underground Facilities .....	13
8.8	Street Trench Moratorium/Warranty .....	13
8.9	Utility Planning/Underground Conversion .....	13
8.10	Pedestals .....	13
8.11	Notice of Cable System Construction .....	14
8.12	New Developments .....	14
8.13	Verification of Completion of Construction .....	14
8.14	Failure to Perform Street Work .....	15
8.15	Discontinuance of Public Right-of-Way .....	15
8.16	Discontinuance and Removal of the Cable System .....	15
 <b>SECTION 9 SERVICE EXTENSION .....</b>		<b>16</b>
9.1	Service/Line Extension .....	16
 <b>SECTION 10 PAYMENTS TO CITY .....</b>		<b>16</b>
10.1	Franchise Fee .....	16
10.2	Discounted Rates .....	17
10.3	No Fee Deductions .....	17
10.4	Franchise Fee Statement .....	18
10.5	Financial Records .....	18
10.6	Possessory Interest Tax .....	18
10.7	Failure to Make Payments .....	18
 <b>SECTION 11 RATES .....</b>		<b>19</b>
11.1	Rates .....	19
11.2	Rate Uniformity .....	19
11.3	Notice of External Costs .....	19
 <b>SECTION 12 PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNELS ...</b>		<b>19</b>
12.1	PEG Access Channels .....	19
12.2	Carriage Requirements .....	19
12.3	PEG Channel Allocation .....	20
12.4	Signal Input Points .....	20
12.5	Educational and Government Channel Interconnection .....	21
12.6	Channel Alignment .....	21
12.7	PEG Channel Relocation .....	21
12.8	PEG Channel Listing .....	21
12.9	Public Access Facilities .....	22
12.10	Public Access Corporation .....	22
12.11	Indemnification By PEG Programming Producers and Users .....	22
12.12	HDTV PEG Channel Conversion .....	22

12.13	Secure PEG Private Access Channels .....	23
<b><u>SECTION 13 VIDEO AND INTERNET/DATA SERVICE OUTLETS TO CITY</u></b> .....		23
13.1	Cable Service to City Facilities .....	23
13.2	Data Services to City Facilities .....	23
13.3	Video Service to Public Schools .....	24
13.4	Data Services to Public Schools .....	24
13.5	Data Services Standards .....	24
13.6	Additional Service Distribution .....	24
13.7	Service Outlet Activation .....	25
13.8	No Franchise Fee Offset .....	25
<b><u>SECTION 14 INSTITUTIONAL NETWORK</u></b> .....		25
14.1	Institutional Network .....	25
14.2	Network Activation .....	25
14.3	I-Net For City Usage .....	26
14.4	I-Net Maintenance .....	26
<b><u>SECTION 15 TECHNOLOGY CAPITAL GRANT</u></b> .....		26
15.1	Technology Capital Grant .....	26
<b><u>SECTION 16 EMERGENCY ALERT SYSTEM</u></b> .....		27
16.1	Emergency Alert System .....	27
<b><u>SECTION 17 CUSTOMER SERVICE</u></b> .....		27
17.1	Customer Service Compliance .....	27
17.2	Right to Amend .....	27
17.3	Anti-Redlining .....	28
17.4	Service Installation .....	28
17.5	Installations and Service Calls .....	28
17.6	Service Disconnection .....	29
17.7	Service Interruption Response .....	29
17.8	Voluntary Service Interruptions .....	29
17.9	Office Availability .....	29
17.10	Telephone Availability .....	30
17.11	Telephone Response .....	30
17.12	Subscriber Information .....	30
17.13	Privacy and Monitoring .....	31
17.14	Subscriber Privacy Notices .....	31
17.15	Subscriber Notices .....	31
17.16	Equipment Compatibility .....	32
17.17	Customer Service Performance Notice .....	32
17.18	Notices on Service Modifications .....	32

17.19	Franchise Authority Identification .....	32
17.20	Sexually Explicit Programming .....	33
17.21	Channel Blocking .....	33
17.22	Billing Itemization .....	33
17.23	Billing Disputes .....	33
17.24	Refunds and Credits .....	33
17.25	Security Deposit Refunds .....	34
17.26	Service Billing .....	34
17.27	Notices of Termination .....	34
17.28	Late Fees .....	34
17.29	Signal Quality .....	35
17.30	Negative Options .....	35
17.31	Service Call Charges .....	35
17.32	Signal Reception Devices .....	35
17.33	Complaints Referred by City .....	36
17.34	Record of Subscriber Complaints .....	36
17.35	Schedule of Penalties for Breach of Customer Service Standards .....	36
 <b><u>SECTION 18</u> FCC TECHNICAL STANDARDS .....</b>		<b>37</b>
18.1	Compliance With Technical Standards .....	37
18.2	City Option of Technical Testing .....	37
18.3	Reports .....	37
 <b><u>SECTION 19</u> TRANSFER, ASSIGNMENT, OWNERSHIP, AND CONTROL .....</b>		<b>37</b>
19.1	Prior Written Consent Required Before Sale, Assignment, or Transfer .....	37
19.2	Ownership or Control Shall Not be Transferred Without Consent .....	38
19.3	Grantee's Application .....	38
19.4	Contents of Initial Application/Compliance with Terms .....	39
19.5	Ownership Change .....	39
19.6	Transfer Without Consent .....	39
19.7	Unauthorized Transfer .....	40
19.8	No Waiver of City Rights .....	40
19.9	Successor-In-Interest .....	40
19.10	Management Transfer .....	40
19.11	Circumstances or Transactions Not Requiring the City's Prior Consent .....	40
19.12	Surety, Bond, Insurance, and Similar Franchise Agreement Provisions .....	41
 <b><u>SECTION 20</u> RIGHTS RESERVED TO THE CITY .....</b>		<b>41</b>
20.1	Rights Reserved to the City .....	41
 <b><u>SECTION 21</u> INDEMNIFICATION .....</b>		<b>41</b>
21.1	Indemnification and Hold Harmless Agreement .....	41
21.2	Franchise Approval .....	41

21.3	Enforcement Costs .....	41
<u>SECTION 22</u> INSURANCE .....		42
22.1	Insurance .....	42
22.2	Commercial General Liability .....	42
22.3	Comprehensive Automobile Liability .....	42
22.4	Workers' Compensation .....	42
22.5	Additional Insured .....	42
22.6	Cancellation or Change .....	42
22.7	Certificates of Insurance .....	43
22.8	Qualified Carriers .....	43
<u>SECTION 23</u> FILING AND COMMUNICATION WITH REGULATORY AGENCIES .....		43
23.1	Filings .....	43
23.1	Lawsuits .....	43
<u>SECTION 24</u> RECORDS AND REPORTS .....		43
24.1	Reports .....	43
<u>SECTION 25</u> ALTERNATIVE DISPUTE RESOLUTION PROCEDURES .....		43
25.1	Mandatory Non-Binding Mediation .....	43
25.2	Mandatory Mediation Costs .....	43
25.3	Selection of Mediator .....	44
25.4	Conduct of Mediation Sessions .....	44
<u>SECTION 26</u> ABANDONMENT .....		45
26.1	Abandonment of Service .....	45
26.2	Removal or Abandonment of Franchise Property .....	45
<u>SECTION 27</u> SECURITY FUND .....		45
27.1	Required Security Fund .....	45
27.2	Issuing Institution Approval .....	46
27.3	Right of City to Draw on Security Fund .....	46
27.4	No Waiver of Bonding Requirements .....	46
<u>SECTION 28</u> PROCEDURES FOR ADDRESSING FRANCHISE VIOLATIONS .....		46
28.1	Franchise Violations .....	46
28.2	Procedures for Determining Franchise Violations .....	47
28.3	Assessment of Liquidated Damages .....	48
28.4	Revocation of Franchise .....	49
28.5	Remedies Not Exclusive .....	51
<u>SECTION 29</u> RENEWAL .....		51

29.1	Renewal Rights and Remedies .....	51
<u>SECTION 30</u> GENERAL PROVISIONS .....		52
30.1	Notices .....	52
30.2	Venue and Compliance with Controlling Law .....	52
30.3	Conflicts .....	52
30.4	No Waiver .....	52
30.5	Legal Fees .....	53
30.6	Severability .....	53
30.7	Captions .....	53
30.8	Entire Understanding .....	53
30.9	City Approval .....	53
30.10	Corporate Authority .....	54
30.11	Covenants and Conditions .....	54
30.12	Municipal Powers .....	54
30.13	Drafting Ambiguities .....	54
<u>SECTION 31</u> EQUAL OPPORTUNITY CONTRACTING PROGRAM .....		54
31.1	Equal Opportunity Contracting .....	54
31.2	Equal Opportunity Contracting Local Business Employment .....	55
<u>SECTION 32</u> DRUG-FREE WORKPLACE .....		55
32.1	Drug Free Workplace .....	55
<u>SECTION 33</u> DISABLED ACCESS COMPLIANCE .....		55
33.1	Disabled Access Compliance .....	55
<u>SECTION 34</u> EFFECTIVE DATE .....		57
34.1	Effective Date .....	57
<u>SECTION 35</u> SIGNATURES .....		57
EXHIBIT A-1 CONSTRUCTION PHASES		
EXHIBIT A-2 CONSTRUCTION SCHEDULE		
EXHIBIT B	PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS	
EXHIBIT C	INSTITUTIONAL NETWORK	



**COMPETITIVE CABLE TELEVISION FRANCHISE AGREEMENT**  
**BETWEEN THE CITY OF SAN DIEGO AND**  
**WESTERN INTEGRATED NETWORKS OF CALIFORNIA, OPERATING LLC**

This Cable Television Franchise Agreement is made and entered into between the City of San Diego, a municipal corporation in the State of California [the City], and Western Integrated Networks of California, Operating, L.L.C. [Grantee], [Party(ies)].

**RECITALS**

WHEREAS, the City has an open outstanding Request For Proposals for additional cable television systems within the City; and

WHEREAS, Grantee wishes to provide competitive cable television and other related services within the Public Right-of-Way in the City and has requested a Franchise in order to do same; and

WHEREAS, the City has received Grantee's application to use the City's Public Right-of-Way to provide competitive cable television services and other competitive services in the City; and

WHEREAS, the City has determined that granting of an additional competitive cable television franchise on the terms set forth herein shall serve the public interest by providing the City and its residents with competitive cable television services and through such system, additional services as allowed by law; NOW, THEREFORE,

In consideration of and reliance upon the respective representations, promises, concessions, terms and conditions contained herein, the Parties agree as follows:

**SECTION 1 DEFINITIONS**

- 1.1 "Affiliate" shall mean each Person who, or which, falls into one or more of the following categories: (i) each Person having, directly or indirectly, a controlling interest in Grantee; (ii) each Person in which Grantee has, directly or indirectly, a controlling interest; (iii) each officer, director, general partner, member of a limited liability company (where Grantee is a pertinent limited liability company), and joint venturer or joint venture partner of Grantee, as well as each limited partner holding an interest of fifteen percent (15%) or more of Grantee; and (iv) each Person, directly or indirectly, controlling, controlled by, or under common control with Grantee; provided that "Affiliated Person" shall in no event mean the City, any limited partner or member of a limited liability company holding an interest of less than fifteen percent (15%) of Grantee, or any creditor of Grantee solely by virtue of its status as a creditor
- 1.2 "Administrative Enforcement Order" shall mean an order issued by an Enforcement Hearing Officer.

- 1.3 “Agency” shall mean any governmental Agency other than the City of San Diego, including the FCC and the CPUC having jurisdiction over any relevant term or condition of this Franchise.
- 1.4 “Business Service Center” shall mean the facility or facilities which shall include Grantee’s administrative management offices, customer service business office, and customer service center.
- 1.5 “Cable Act” shall mean the federal “Cable Communications Policy Act of 1984” (47 U.S.C. " 521 et seq.), as amended and modified by legislation such as the federal “Cable Television Consumer Protection and Competition Act of 1992” and the federal “Telecommunications Act of 1996” and as may be subsequently amended or modified.
- 1.6 “Cable Service” shall mean a “cable service”, as defined in the Cable Act or rules or regulations promulgated by the FCC in accordance with the Cable Act.
- 1.7 “Cable System” or “System” shall mean “cable system”, as defined in the Cable Act or rules or regulations promulgated by the FCC in accordance with the Cable Act.
- 1.8 “CEQA” shall mean the California Environmental Quality Act.
- 1.9 “Channel” shall mean a “channel” or “cable channel” of 6MHz of frequency bandwidth and as defined in the Cable Act, or rules or regulations promulgated by the FCC in accordance with the Cable Act.
- 1.10 “City” shall mean the City of San Diego, a municipal corporation in the State of California, and its agents, servants, officials, employees, agencies, affiliates and successors, and each of them.
- 1.11 “City Auditor” shall mean the City of San Diego Auditor and Comptroller or duly authorized designee.
- 1.12 “City Facility” shall mean any and all facilities, buildings, and structures that are owned, operated, leased, maintained, or used by the City of San Diego. City Facilities include, but are not limited to, City administration buildings, conference centers, libraries, fire stations, police stations and police storefront offices, recreation centers, operations centers, communications facilities, public works facilities, structures, and leased office facilities or portions thereof which are devoted exclusively to City use.
- 1.13 “City Manager” shall mean the City of San Diego City Manager or designee including, but not limited to, Deputy City Manager, City Engineer, Planning and Development Review Director, and Information Technology Director.
- 1.14 “Complaint” shall mean any verbal or written allegation or assertion of dissatisfaction with Cable Service or other related services or operations of the Grantee, including but not limited to

issues of signal quality and Subscriber billing, made by a Person to either Grantee or the City, which requires (i) dispatch of a technician or a service call or (ii) the referral of the verbal or written allegation or assertion of dissatisfaction to Grantee.

- 1.15 “Construction Plan” shall mean the design and construction document required by the City Manager in order to obtain permits to construct and install the Cable System as specified in Section 6.
- 1.16 “Construction Schedule” shall mean Grantee’s schedule of construction and installation required pursuant to Section 6 and identified in Exhibit A-2 of this Franchise Agreement.
- 1.17 “Construction Bond” shall mean a corporate surety bond in a form and amount acceptable to the City Manager representing the value of the estimated cost of restoration of the public Right-of-Way pursuant to Section 6 of this Franchise Agreement.
- 1.18 “Council” shall mean the City Council of the City and successors in interest of the Council.
- 1.19 “CPUC” shall mean the State of California Public Utilities Commission
- 1.20 “Drop” shall mean the cable or wire that connects the distribution portion of a Cable System to a Subscriber’s premises.
- 1.21 “Effective Date” shall mean the thirtieth (30<sup>th</sup>) day from and after the adoption by the City Council of this Franchise.
- 1.22 “Enforcement Hearing Officer” shall be the City Manager or representative designated to preside over administrative hearing pursuant to Section 28 of this Franchise.
- 1.23 “FCC” shall mean the Federal Communications Commission, any designee, or any successor thereto.
- 1.24 “FCC Rules and Regulations” shall mean the rules and regulations adopted from time to time by the Federal Communications Commission pursuant to the Communications Act of 1934, as amended, or other federal law.
- 1.25 “Force Majeure Event” shall include acts of war, sabotage, riots or civil disturbances, restraints imposed by order of a governmental Agency or court, explosions, acts of public enemies, labor strikes and natural disasters such as floods, earthquakes, landslides, and fires.
- 1.26 “Franchise Agreement” or “Franchise” shall mean this document allowing Grantee to construct, reconstruct, maintain, and operate a Cable System in the Public Rights-Of-Way located within the City’s Service Area.

- 1.27 “Franchise Fee” shall mean payments to the City constituting five percent (5%) of the Gross Revenues collected or received by Grantee in each calendar year or portion thereof, during the term of this Franchise.
- 1.28 “Grantee” shall mean Western Integrated Networks of California, Operating L.L.C., and any lawful successor or assignee of the original Grantee.
- 1.29 “Gross Revenues” shall mean and include:
- 1.29.1 Any and all income and other consideration earned or in any manner gained or derived by Grantee from or in connection with the operation of the Cable System, or any part of the Cable System, located within the Service Area, including:
- (A) Any revenue received for Cable Service, including but not limited to revenue for basic service, tier service, additional outlets, audio service, commercial service, premium service, pay-per-view service, and related per-event services, or for the distribution of any Cable Service over the Cable System;
  - (B) Any revenue received for installation, change in Cable Service and reconnection charges and similar fees;
  - (C) Any revenue received for converters, remote controls or other Subscriber terminal equipment leased or rented in connection with the delivery of Cable Services;
  - (D) Any revenue received for service charges, collection charges and late fees attributable to delinquent accounts;
  - (E) Any revenue received from Cable Service-related activities, including but not limited to revenue received from leased access programmers and other users, and imputed revenue derived from trades and barter equivalent to the full retail value of goods and services provided by Grantee;
  - (F) Any revenue, payment, or consideration earned by Grantee for direct payment to a third party as a cost of doing business (including, but not limited to, Franchise Fees), and such revenue, payment or consideration shall be included in, and not deducted from, the total Gross Revenue figure on which Franchise Fees are to be paid;
  - (G) Any revenue of any other Person which is derived within the City, including but not limited to revenue or compensation paid directly by such Subscribers or users, advertisers on such Cable System or others (i) to the suppliers of Video Programming on such Cable System, (ii) to home shopping services in

connection with the sales of products or services derived from Video Programming over such a Cable System, or (iii) to leased access video programmers for programming transmitted over such a Cable System; provided, however, that Grantee shall not be required to collect, and shall not be liable for, Franchise Fees based on such revenues from such other Persons to the extent that such revenues are not collected by Grantee;

- (H) Any revenue received by Grantee from the delivery of non-Cable Services over Grantee's Cable System, to the extent that the inclusion of such revenue in Gross Revenues is not prohibited by law;
- (I) In computing Gross Revenues from sources other than those exclusively from the City of San Diego, including but not limited to revenue derived from the sale of advertising, home shopping services, programming guide sales, or the lease of Channel capacity over its Cable System, in which the revenue is attributable to the operation of Grantee's Cable System both inside the City and outside the City, the aggregate revenue received by Grantee from such other sources shall be, multiplied by a fraction, the numerator of which shall be the number of Grantee's Subscribers in the City as of the last day of such period and the denominator of which shall be the number of Subscribers within all areas served by the Grantee from which the revenue was associated or derived as of the last day of such period.

1.29.2 Gross Revenues shall not include:

- (A) Any tax of general applicability imposed upon a Grantee or upon Grantee's Subscribers by the state, federal or any other higher taxing authority and required to be collected by Grantee and passed through to the taxing entity.
- (B) Any foregone revenue which Grantee chooses not to receive in exchange for its provision of free cable or other communications services to employees of Grantee or employees of another cable operator living within the corporate limits of the City, or public institutions or other institutions designated in this Franchise Agreement; provided, however, that such foregone revenue which Grantee chooses not to receive in exchange for trades, barter, services or other items of value shall be included in Gross Revenues.
- (C) Any revenue derived from telephony services
- (D) Other service which the City is legally prohibited from including in Gross Revenues.

- (E) Any revenues from comparable services offered by any other Cable System franchisee for which a franchise fee is not being paid.

1.29.3 There shall be deducted from Gross Revenues:

- (A) Bad debts written off by Grantee in the normal course of business, however, bad debt recoveries shall be included in Gross Revenues with no deduction therefrom for any and all expenses related to the collection of the related bad debt.
- (B) Refunds made to Subscribers or other third parties.

- 1.30 “Institutional Network or “I-NET” shall mean the fiber optic communications network described in Section 14 to be constructed and maintained by Grantee for the exclusive use of City
- 1.31 “Master Implementation Plan” shall mean the document or documents which provide a sufficient level of detail to determine the location of above ground and below ground improvements as required for full environmental review of Grantee’s System.
- 1.32 “Normal Operating Conditions” shall mean those service conditions which are within the control of Grantee including, but not limited to, special promotions, pay-per-view events, rate increases, regular or seasonal demand periods, changes in the billing cycle, changes in Channel lineups that are within Grantee’s control, and repairs, rebuilds, maintenance or upgrade of the Cable System. Those conditions which are not within the control of Grantee include, but are not limited to, natural disasters, civil disturbances, power outages, and severe weather conditions.
- 1.33 “Normal Business Hours” shall mean those hours during which most similar businesses in the community are open to serve Subscribers. In all cases, Normal Business Hours include some evening and weekend hours as determined by Grantee.
- 1.34 “PEG Channels” shall mean the public Channels, educational Channels, and government Channels provided by Grantee on the Cable System as designated by the City.
- 1.35 “PEG Private Access Channels” shall mean those described in Section 12.13.
- 1.36 “PEG Programmer” shall mean those non-profit public programmers, educational programmers, and governmental programmers who produce and provide Video Programming and other Programming Services on the PEG access Channels established under Section 12 of this Franchise.
- 1.37 “Person” shall mean any natural person or any association, firm, joint partnership, association, joint venture, joint stock company, trust, corporation, or any other governmental or non-governmental, legally recognized entity.

- 1.38 “Phasing Maps” shall mean the Grantee’s initial proposed order of construction within the Service Area as shown in Exhibit A-1.
- 1.39 “Primary Processing Center” shall mean a structure which is the point of convergence for Grantee services to be processed, and transmitted over the network including processing and conversion of signals into formats for transmission over the network.
- 1.40 “Programming Service” shall mean information services that a cable operator makes available to all Subscribers generally, except for telephony services.
- 1.41 “Provision” shall mean any agreement, clause, condition, covenant, qualification, restriction, reservation, term, or other stipulation in this Franchise that defines, otherwise controls, establishes, or limits the performance required or permitted by either Party to this Franchise Agreement. All Provisions, whether covenants or conditions, shall be deemed to be both covenants and conditions.
- 1.42 “Public Right-of-Way” or “Rights-of-Way” shall mean in, upon, above, along, across, under, and over the public streets, roads, lanes, courts, ways, alleys, boulevards, and places, that are within the jurisdiction of the City. This term shall not include any property owned by any Person or Agency other than the City, except as provided by applicable laws or pursuant to an agreement between the City and such Agency.
- 1.43 “Public School” (“School”) shall mean public elementary schools, public secondary schools, public charter schools, public colleges, universities, and associated educational administrative facilities.
- 1.44 “Security Fund” shall mean and consist of the irrevocable standby letter of credit or cash deposit as described in Section 27 of this Franchise Agreement.
- 1.45 “Service Interruption” shall mean the loss of picture or sound on one or more Channels.
- 1.46 “Service Area” shall mean the entire area within the corporate limits of the City where Grantee provides Cable Service.
- 1.47 “Subscriber” means any Person lawfully receiving any Cable Service provided by Grantee by means or in connection with the Cable System, who is either required to pay a fee or otherwise required by this Franchise to provide for such Cable Service.
- 1.48 “Video Programming” means programming provided by, or generally considered comparable to, programming provided by a television broadcast station.

## **SECTION 2 GRANT OF RIGHTS AND RULES OF CONSTRUCTION**

- 2.1. Franchise Grant. By this Franchise Agreement the City issues to Grantee a non-exclusive right (or “Franchise”) to construct, reconstruct, maintain, and operate a Cable System in the Public

Rights-Of-Way located within the City's Service Area, as it currently exists and as it may exist in the future. The City acknowledges that the Grantee shall offer to Subscribers other services to be provided by the structures and facilities installed and operated by Grantee pursuant to the Franchise. The grant of this Franchise is subject to the faithful performance and observance by Grantee of all of the terms and conditions described in and incorporated by this Franchise Agreement.

- 2.2 Acceptance of This Franchise Agreement. Grantee accepts and agrees to all the Provisions of this Franchise Agreement (including every law, statute, ordinance, rule, regulation, and order incorporated into this Franchise Agreement) and the obligations imposed upon Grantee thereby.

This Franchise Agreement is subject to and shall be governed by all requirements of the Cable Act, as amended, and other applicable federal, state, local and City laws, ordinances, and regulations.

No privilege or exemption is granted or conferred by this Franchise except those privileges and exemptions specifically prescribed herein. Any privilege claimed under this Franchise by Grantee in any Public Right-Of-Way shall be exercised in such a manner so as not to disrupt, displace, or interfere with any prior lawful occupancy of that Public Right-of-Way.

Grantee shall have no recourse whatsoever against the City for any loss, cost, expense, or damage arising out of any Provision or requirement of this Franchise Agreement and its lawful enforcement by the City.

- 2.3 Franchise Non-Exclusive. This grant of authority to operate a Cable System in the City and the right to use and occupy the Public Rights-Of-Way for the purposes herein set forth shall not be exclusive. The City reserves the right, at its discretion, to grant other new or prospective cable television franchises, provided that any such grant shall be on terms and conditions which are no more favorable or no less burdensome than those set forth in this Franchise, which terms or conditions, taken in their totality, would create a competitive disadvantage for Grantee as compared to such new or prospective franchisees.

- 2.4 Reservation of Rights. In addition to any rights specifically reserved to the City by this Franchise Agreement, the City reserves to itself every right and power vested in the City by applicable law, as well as the Charter of the City and any ordinance adopted by the City Council.

The rights reserved to the City and Grantee under this Franchise Agreement are in addition to all other rights held by the City and Grantee, whether authorized by the San Diego Municipal Code, or any other applicable federal, state, or local law, ordinance, rule, or regulation. No action, proceeding or exercise of a right by the City or Grantee shall affect any other right which may be held by the City or Grantee.



Neither the grant of this Franchise nor of any other franchise, nor any Provisions contained therein, shall constitute a waiver or bar by the City to the lawful exercise of any governmental right or power. This Franchise does not relieve Grantee of any applicable requirement or provision of the San Diego Municipal Code; of any federal or state law; or of any federal, state, or City rule, regulation, or specification, including, but not limited to, any requirement relating to Street work, Street excavation permits, or the use, removal or relocation of property in Streets, except as specifically prescribed herein.

Any use of the Cable System for provision of services not authorized by this Franchise Agreement must be approved by the City outside of this Franchise Agreement, to the extent allowed by federal, state, or local law.

The City reserves the right, and in accepting this Franchise, Grantee shall acknowledge and accept the City's right to adopt, to incorporate into the San Diego Municipal Code and to incorporate by reference into the Franchise Agreement, any additional rules, regulations, terms, conditions authorized or permitted by state or federal law as the City Council finds necessary in the lawful exercise of the City's constitutional powers, the City's police powers to protect the public health, safety or welfare, the City's powers of taxation, and the City's powers of eminent domain. Neither the granting of any franchise by the City nor any Provision of this Franchise Agreement shall constitute a waiver or bar to the lawful exercise of any governmental right or power, including those rights and powers vested in the City.

- 2.5. Force Majeure. In the event Grantee's performance of any of the terms, conditions or obligations required by this Franchise Agreement is prevented by an event of Force Majeure, such inability to perform shall be deemed excused and no liquidated damages or sanctions shall be imposed as a result thereof, but only to the extent such Force Majeure Event prevents Grantee from performing its Franchise obligations.

### **SECTION 3 DESIGNATED SERVICE AREA**

- 3.1 Service Area. The Service Area shall constitute all areas within the corporate limits of the City of San Diego plus all areas annexed thereto which meet the service criteria established by the terms of Section 9.1.

### **SECTION 4 FRANCHISE TERM**

- 4.1 Term. The term of this Franchise shall be fifteen (15) years, commencing on the Effective Date of the Franchise as provided in Section 34.
- 4.2 Termination. This Franchise and all rights of Grantee thereunder shall automatically terminate on the expiration of the term of this Franchise, unless an extension is granted by the City or the Franchise previously has terminated or been revoked, in accordance with this Franchise Agreement. Upon termination Grantee shall be required to follow the Provisions for discontinuance and removal of the Cable System pursuant to Section 8.16.

## **SECTION 5 MASTER IMPLEMENTATION PLAN/CEQA COMPLIANCE**

- 5.1 Master Implementation Plan. The award of this Franchise is based upon a general description of the work to be performed and the Services to be offered pursuant to the terms of this Franchise. The physical characteristics of the work necessary to implement Grantee's plan and the necessary construction permits or other permits required by the City to accomplish that work cannot be defined until sufficient preliminary engineering and design tasks are completed by Grantee. Upon the Effective Date of this Franchise, Grantee shall promptly undertake all engineering and design tasks necessary to complete a Master Implementation Plan for implementation of the Grantee's System. The Master Implementation Plan shall provide sufficient level of detail to determine the location of above ground and below ground improvements as required for full environmental review of Grantee's System. The Master Implementation Plan shall be submitted to the City for review and written approval. The Master Implementation Plan shall include the siting of the Business Service Center and the Primary Processing Center. The Business Service Center shall be constructed and maintained within the boundaries of the City. It is the intent of the parties hereto that the Primary Processing Center shall be constructed and maintained within the boundaries of the City. Grantee shall, however, have the right to build the Primary Processing Center outside the boundaries of the City if such location is dictated by the architecture of Grantee's system. Grantee shall not proceed with construction of any portion of its System unless and until the Master Implementation Plan is approved by the City.
- 5.2 CEQA Compliance. Grantee shall incorporate environmental considerations into the conceptualization, design and planning of the Master Implementation Plan, as required pursuant to CEQA Guideline 15004(3). The Master Implementation Plan shall be subject to full CEQA review and compliance, with the City as the lead agency. As specified in the Land Development Code section of the San Diego Municipal Code (Article 8, Division 1), the Planning and Development Review Director of the City shall: (1) conduct environmental review of the Master Implementation Plan, including a determination of the information required to perform the review; (2) determine the environmental significance based on applicable administrative guidelines; (3) determine the type of environmental document required; and (4) prepare environmental documents for certification by the City as required by CEQA. Grantee shall not proceed with construction of any portion of its System unless and until the City Council certifies full compliance with applicable CEQA requirements.
- 5.3 Costs. Grantee shall be responsible for all costs of compliance with CEQA and the obligations in this Section, including direct or indirect costs of Grantee, the City, or third parties retained to assist with performance of the obligations in this Section.

## **SECTION 6 CONSTRUCTION OF NETWORK**

- 6.1 Construction Schedule. After full compliance with the Provisions of Section 5, the City shall issue a Notice to Proceed for Grantee to construct Grantee's System in the Service Area in

accordance with the Construction Schedule and as proposed in the Phasing Map, attached hereto as Exhibits "A-2" and "A-1" respectively, and incorporated herein by this reference. The phasing of construction proposed in Exhibit "A-1" shall be modified in the Notice to Proceed as may be necessary to comply with Section 5.

Failure of Grantee to substantially adhere to the Construction Schedule in accordance with Exhibit "A-2," as determined by the City Manager, shall subject Grantee to damages as set forth in Section 28. Grantee shall not be held liable for failure to substantially adhere to the Construction Schedule for any Force Majeure Event.

- 6.2 Construction Plans. After full compliance with the Provisions of Section 5 and prior to the commencement of construction and installation work for each phase of construction in accordance with the Construction Schedule and Master Implementation Plan, Grantee shall submit a Construction Plan to the City Manager or designee for review and approval for each phase of construction of Grantee's Cable System. The Construction Plans shall include a sufficient level of detail for issuance of permits including, but not limited to, location, plan profile, and specifications of the materials and equipment proposed to be installed. The Construction Plan shall be prepared in compliance with the current City standards and specifications. A traffic control plan shall be incorporated into the Construction Plans, and will be reviewed by and require approval of the City Manager. The complete set of Construction Plans shall be to the satisfaction of the City Manager. Prior to the issuance of a permit to construct, all fees must be paid. Said fees shall include, but are not limited to, plan check fees, permit fees, and inspection fees.

After full compliance with the Provisions of Section 5, Grantee may construct or have constructed each phase of Grantee's Cable System once the construction for that phase has been approved by the City Manager and appropriate permitting pursuant to this Franchise and the San Diego Municipal Code has been issued by the City.

Approval by the City Manager of the Construction Plans or any work performed under the Construction Plans shall not release Grantee from the responsibility for or the correction of any errors, omissions, mistakes, or other inaccuracies that may be contained in the Construction Plans.

- 6.3 Construction Bond. Prior to the commencement of construction and installation work for each phase of construction, in accordance with the Construction Schedule, Grantee shall provide a Construction Bond in an amount required by the City Manager which shall represent the value of the estimated cost of restoration of the public Right-of-Way. Such Construction Bond shall be provided by Grantee, as principal, and issued by a corporation authorized to do business in the State of California and approved by the City Manager. This Construction Bond shall be separate from the irrevocable letter of credit or cash deposit described in Section 27.

## **SECTION 7   MAPS**

- 7.1     Maps Required. Grantee shall maintain at its local office an accurate set of maps showing all of Grantee's Cable System equipment installed in the Public Right-of-Way of the City. Such maps shall be made available for inspection 8:00 a.m. through 5:00 p.m., Monday through Friday by the City upon request to Grantee upon request the City shall be provided up to three (3) duplicates of any and all maps maintained by Grantee at no charge to the City.

## **SECTION 8   CONSTRUCTION PRACTICES**

- 8.1     Standards. Grantee agrees to perform all construction in accordance with the San Diego Municipal Code, state, and federal laws and all cable television industry construction practices and procedures while constructing, operating, and maintaining its Cable System within the Public Right-of-Way. Such construction practices shall include, but not be limited to the most current version of: (i) Current Standard Specifications for Public Works Construction Including Regional and the City of San Diego Supplement Amendments, (ii) Standard Special Provisions for Signals, Lighting, and Electrical Systems of the City of San Diego, (iii) Current City of San Diego Standard Drawings, (iv) City Utility Coordination Committee Policies and Procedures Manual, (v) CPUC General Order 95 and General Order 128, (vi) National Electrical Code, (vii) National Electrical Safety Code and all future policies, procedures, rules and regulations as may required by the City, state, or federal requirements.
- 8.2     No Burden on Public Right-of-Way. Grantee shall not erect, install, construct, repair, replace or maintain its Cable System in such a fashion as to unduly burden the present or future use of the Public Right-of-Way. If the City in its reasonable judgment determines that any portion of the Cable System is an undue burden, Grantee at its expense, shall modify its System, or take such other actions as the City may determine are in the public interest, to remove or alleviate the burden, and Grantee shall do so within the time period established by the City and at no cost to the City.
- 8.3     Restoration of Property. Grantee shall immediately restore, at its sole cost and expense, as required by the San Diego Municipal Code any portion of the Public Right-of-Way that is in any way disturbed by the construction, operation, maintenance or removal of the Cable System to the same or better condition than that which existed prior to the disturbance, and shall, at its sole cost and expense, immediately restore and replace any other property, real or personal, disturbed, damaged or in any way injured by or on account of Grantee or by its acts or omissions, to the same or better condition as such property, was in immediately prior to the disturbance, damage or injury. Such a restoration shall start promptly but no more than fifteen (15) days, from Grantee becoming aware of the problem.

- 8.4 Relocation of Facilities. Grantee shall at its own cost and expense, protect, support, disconnect or remove from the Public Right-of-Way any portion of the Cable System when required to do so by the City or Agency as provided in San Diego Municipal Code.
- 8.5 Joint Use. Grantee shall permit the joint use of its conduits and facilities located in the Public Right-of-Way by utilities and by the City or other Agencies to the extent reasonably practicable and upon payment of a reasonable fee. In areas of the City where the City Manager finds that the Public Right-of-Way will not readily accommodate further underground facilities, the City Manager may require the Grantee's conduits in such areas to be oversized, duplicated, or placed in multiple configurations, and Grantee shall share the use of its underground conduits and multiple configurations at such locations at reasonable rates in accordance with Grantee's current or future needs for its own operations. Grantee shall have the right to impose terms and conditions which conditions will serve to protect the health and safety on such joint usage by other parties which conditions are applied to other franchisees in a non-discriminatory fashion and are consistent with industry standards and practices and the integrity of the Cable System.
- 8.6 Private Property. Grantee shall be subject to all laws and regulations regarding private property in the course of constructing, installing, operating, or maintaining the Cable System in the City.
- 8.7 Underground Facilities. Grantee's cable, wires, and other equipment shall be placed underground wherever existing electric, telephone, and cable television utilities are underground. Grantee shall coordinate its underground construction and other work in the streets and Public Right-of-Way with the City's program for street construction, rebuilding, and resurfacing. In new developing areas, Grantee shall install the necessary cables, wires or other equipment at the same time and utilize the same trenches as other utility electric, telephone, and cable television companies, provided that Grantee shall have been given sufficient notice of such trenching so as to permit the timely coordination of simultaneous construction.
- 8.8 Street Trench Cut Moratorium/Warrantee. Grantee shall pay all fees and comply with all the provisions of the San Diego Municipal Code and related procedures established by the City Engineer pertaining to street cut moratoriums and street cut warrantees.
- 8.9 Utility Planning/Underground Conversion. Grantee shall be a member and participant in the City's Utilities Planning Committee and Underground Utility Conversion Committee for the coordination of underground construction and the conversion of overhead utilities to underground systems.
- 8.10 Pedestals. Grantee may install powered ("active") pedestals, nodes, and backup power supplies aboveground where existing utilities are underground to the extent consistent with the City's construction standards. Aboveground active equipment structures shall be located to an extent possible in the least obtrusive location to minimize negative impacts including the following types of areas:

- (A) adjacent to non-residential properties
- (B) adjacent to the sides of rear yards of residential properties on major streets
- (C) located as close as possible to the property line

Prior to the installation of aboveground equipment structures, Grantee shall notify, by first class mail, all property owners of those properties where such facilities are to be located. Such notice shall show the size, type and specific location of the proposed facility, type of screening, the intended date of installation, and telephone numbers where residents can contact Grantee. This mailing shall occur not less than fifteen (15) days prior to any such installation. Prior to the installation, Grantee shall investigate all protests and, after contacting the property owner, determine the appropriate action necessary to resolve the situation including the addition of landscaping, barriers or the selection of an alternative location for such structure.

Grantee shall promptly remove all graffiti on any structure. In the event Grantee fails to remove all graffiti from the structure within two (2) business days after notice by the City, the City shall have the right to remove any graffiti and the Grantee shall reimburse the City for all costs incurred for the removal within thirty (30) days of receipt of a bill for work done.

- 8.11 Notice of Cable System Construction. Grantee shall, at least forty-eight (48) hours prior to commencement of such work, notify the City and residents or business owners on affected Streets of any material construction, resulting in material interference with the use of Public Right-of-Way, or major repairs including any which require Street or sidewalk trenching, but excluding routine repair and maintenance activities which do not cause material interference with the use of Public Right-of-Way,. Notification may be provided on a phase-in basis to notify residents or business owners in areas immediately affected rather than to all residents or business owners generally. Grantee shall provide such notification by either leaving one appropriate notice (e.g., a door hanger notice) at each affected residence or place of business or by sending one appropriate notice by first-class mail, whichever form of notification, in the reasonable judgment of Grantee, is more likely to provide all affected Persons with adequate advance notice at least forty-eight (48) hours prior to work commencement.
- 8.12 New Developments. Grantee shall install its Cable System (excluding Drops to individual dwelling units) in all new subdivisions and developments on the date on which other utility facilities are installed in such subdivision or developments . Such requirement shall not apply in any instance where Grantee has not been notified of the date and location of such potential installation.
- 8.13 Verification of Completion of Construction. Construction of the Cable System, as described in this Section shall not be considered complete until:

- 8.13.1 Grantee has accomplished all of the following in every portion of the Service Area: (i) for aerial construction, put up all necessary strand and lashed all necessary cable (including trunk and feeder cable); (ii) for underground construction, laid all cable in conduit or by direct burial and refilled all trenches, restored all road surfaces, and, except where prevented by weather conditions, restored all landscaping; (iii) installed all service node components, amplified housings and modules, or their equivalents (including the modules for return path signals); (iv) installed all power supplies, and completed all related bonding and grounding; (v) installed all necessary connectors, splitters, and taps; (vi) installed all necessary processing equipment; (vii) completed any and all other construction necessary for the Cable System to be ready to deliver the Cable Service advertised to Subscribers, herein to every residence located in the Service Area for each designated phase of Grantee's Construction Schedule as identified in Exhibit "A" of this Franchise.
- 8.13.2 At the sole option of the City, the City has received a written report from an independent professional engineer stating that Grantee's Cable System satisfies all requirements of Section 8.1 of this Franchise pertaining to construction standards.
- 8.13.3 The City has verified the construction of an I-Net, as described in Section 14 herein.
- 8.14 Failure to Perform Street Work. Upon failure of Grantee to commence, pursue, or complete any work required by law or by the Provisions of this Franchise to be done in any Street within a reasonable period of time and to the reasonable satisfaction of the City Manager, the City Manager may, in accordance with the San Diego Municipal Code, cause such work to be done and Grantee shall pay to the City the cost thereof and the itemized amounts reported by the City Manager to Grantee, within thirty (30) days after Grantee's receipt of such itemized report.
- 8.15 Discontinuance of Public Right-of-Way. If a Public Right-of-Way where Grantee has facilities is vacated, eliminated, discontinued or closed, Grantee shall be notified of said street vacation. All rights of Grantee under this Franchise to use the Public Right-of-Way shall terminate and Grantee, within the time period designated by the City Manager, shall remove at no cost to the City, the Cable System from such former Public Right-of-Way unless Grantee obtains all necessary easements or court order allowing Grantee to use the area and space pertaining to the former Public Right-of-Way. Where reasonably possible, and to the extent consistent with the treatment of other utility facilities in the Public Right-of-Way, the City shall reserve easements for Grantee to continue to use the former Public Right-of-Way. Grantee shall be provided at least thirty (30) days written notice of any proposed vacation proceedings involving its facilities.
- 8.16 Discontinuance and Removal of the Cable System. Upon the revocation, termination, or expiration of this Franchise, Grantee shall immediately discontinue the provision of Cable Services and all rights of Grantee to use the Public Right-of-Way shall cease. Grantee, at the

direction of the City, shall remove its Cable System, including all supporting structures, poles, transmission and distribution System and other appurtenances, fixtures or property from the Public Right-of-Way, in, over, under, along, or through which they are installed within six (6) months of the revocation, termination, or expiration of this Franchise. Grantee shall also restore any property, public or private, to the condition in which it existed prior to the installation, erection or construction of its Cable System, except with respect to any improvements made to such property subsequent to the construction of its Cable System; with respect to any such subsequent improvement, Grantee shall ensure that it restores any such improvement to the condition in which it existed immediately prior to the removal of the portion of the Cable System which has affected the improvement's condition, unless the owner of the improved object chooses another course of action. Restoration of municipal property including, but not limited to, the Public Right-of-Way shall be in accordance with the directions and specifications of the City, and all applicable laws, ordinances and regulations, at Grantee's sole expense. If such removal and restoration is not completed within six (6) months after the revocation, termination, or expiration of this Franchise, all of Grantee's property remaining in the affected Public Right-of-Way may, at the option of the City, be deemed abandoned and it may, at the option of the City, become its property or the City may obtain a court order compelling Grantee to remove same. In the event Grantee fails or refuses to remove its Cable System or to satisfactorily restore all areas to the condition in which they existed prior to the original construction of the Cable System, the City, at its option, may perform such work and collect the costs thereof from Grantee. No surety on any Security Fund instrument described in Section 27 shall be discharged until the City has certified to Grantee in writing that the Cable System has been dismantled, removed, and all property restored, to the satisfaction of the City.

## **SECTION 9 SERVICE EXTENSION**

- 9.1 Service/Line Extension. No line extension charge or comparable charge shall be imposed on any current or potential Subscriber for extensions of the Cable System whenever the Grantee receives requests for service by a potential Subscriber and there are at least twenty five (25) dwelling units or other potential Subscribers within five thousand two hundred eighty (5,280) cable bearing strand feet (one mile) of Grantee's trunk or distribution cable, and Grantee shall extend its Cable System to such potential Subscriber(s) at no cost to said potential Subscriber(s). The five thousand two hundred eighty (5,280) feet distance or any multiple or fraction thereof shall be measured in extension length of Grantee's trunk and feeder cable required for Cable Service which is located within the Public Right-of-Way or an existing available easement.

## **SECTION 10 PAYMENTS TO THE CITY**

- 10.1 Franchise Fee. Grantee agrees to pay to the City in lawful money of the United States five percent (5%) of Gross Revenues earned, or in any manner gained or derived by Grantee from the operations and business of providing Cable Services in each calendar year or portion thereof, during the term of this Franchise Agreement. Franchise Fee payments made to the



City by Grantee pursuant to this Section shall not include and shall be separate from other City fees and taxes such as, but not limited to, business tax, inspection, permit and streetcut fees. Such payments shall be made within thirty (30) days after the calendar quarters ending on March 31, June 30, September 30, and December 31 in each year during the term of this Franchise Agreement and thirty (30) days after the expiration or termination of the term of this Franchise Agreement.

Revenues collected as Franchise Fees shall be included in Gross Revenues, unless and until such a practice is prohibited by an authority of competent jurisdiction and said prohibition has been upheld by a final order or judgment issued by a court of competent jurisdiction. For purposes of this Section, an order or judgment shall be considered “final” when such order or judgment is not appealed or, if such judgment or order is appealed, upon the final conclusion of such appeal upholding such order or judgment.

10.2 Discounted Rates. In the event the Subscriber charge is lower in aggregate than what would be charged for the Services individually, then the amount of the Gross Revenue to be allocated to each Service shall be proportional to the individual price of such Service compared to the aggregate of the individual charge of such Services when purchased individually.

10.3 No Fee Deductions. Grantee expressly acknowledges and agrees that:

10.3.1 Except for the payments expressly required by Section 10.1, none of the payments or contributions made by, or the services, equipment, facilities, support, resources, or other activities to be provided or performed by Grantee at the direction of the City or otherwise pursuant to this Franchise Agreement, or otherwise in connection with the construction, operation, maintenance or upgrade of any Cable System or other system, are Franchise Fees chargeable against the compensable payments to be paid to the City by Grantee pursuant to this Section 10.1.

10.3.2 Except with respect to the taxes described in Section 10.6, the compensation and other payments to be made pursuant to this Franchise Agreement shall not constitute a tax, and shall be in addition to any and all taxes of general applicability or other fees or charges which Grantee or any Affiliate shall be required to pay to the City or to any state or federal Agency or authority, all of which shall be separate and distinct obligations of Grantee and Affiliates

10.3.3 Neither Grantee nor any Affiliate shall have or make any claim for any deduction or other credit of all or any part of the amount of the compensation or other payments to be made pursuant to this Franchise Agreement from or against any City or other governmental taxes of general applicability (including any such tax, fee, or assessment imposed on both utilities and cable operators or their services but not including a tax, fee, or assessment which is unduly discriminatory against cable operators or cable subscribers or income taxes) or other fees or charges which Grantee or any Affiliate is required to pay to the City or other Agency.

- 10.3.4 Neither Grantee nor any Affiliate shall apply or seek to apply all or any part of the amount of the compensation or other payments to be made pursuant to this Franchise Agreement as a deduction or other credit from or against any City or Agency taxes of general applicability (other than income taxes) or other fees or charges, each of which shall be deemed to be separate and distinct obligations of Grantee and Affiliates; and
- 10.3.5 No acceptance of any payment by the City shall be construed as an accord that the amount paid is in fact the correct amount, nor shall such acceptance of payment be construed as a release of any claim the City may have for further or additional sums payable under the provision of this Franchise Agreement.
- 10.4 Franchise Fee Statement. Grantee shall prepare and submit to the City with each Franchise Fee payment a statement, verified by Grantee or duly authorized representative of Grantee and in a form acceptable to the City Auditor, showing in such form and detail the facts material to determine the amount of Franchise Fee due to the City for the previous calendar quarter.
- 10.5 Financial Records. Grantee shall permit the City or duly authorized representative of the City upon thirty (30) days written notice to audit, examine, make excerpts or transcripts of all records and data pertaining to enforcement of all matters covered by this Franchise Agreement which are created, kept, or maintained by the Grantee or under the Grantee's control concerning the operations or transactions of the Grantee. Such records and data shall be made available within the City of San Diego and shall be retained for a period of not less than three years following the City's receipt of said payments under this Franchise Agreement. To the extent permitted by law, the City agrees to treat as confidential the information disclosed by the Grantee.
- 10.6 Possessory Interest Tax. By accepting this Franchise, Grantee acknowledges that notice is and was hereby given to Grantee pursuant to California Revenue and Taxation Code Section 10.6 that use or occupancy of any public property pursuant to the authorization herein set forth may create a possessory interest which may be subject to the payment of property taxes levied upon such interest. Grantee shall be solely liable for, and shall pay and discharge prior to delinquency, any and all possessory interest taxes or other taxes levied against Grantee's right to possession, occupancy or use of any public property pursuant to any right of possession, occupancy or use created by this Franchise.
- 10.7 Failure to Make Payments. In the event Grantee fails to make the payments for this Franchise on or before the dates due as provided herein, Grantee shall pay as additional consideration a sum of money equal to one percent (1%) of the amount due for each month or fraction thereof during which the payment is due and unpaid, as interest and for loss of use of the money due. The sanctions of this paragraph are not exclusive and do not preclude action by the City under the terms of Section 28 of this Franchise Agreement in the event payments become overdue by more than sixty (60) days.

## **SECTION 11 RATES**

- 11.1 Rates. Grantee's rates and charges for the provision of Cable Services, including related services such as equipment rental, deposits, disconnect fees, and downgrade fees may be subject to regulation by the City to the full extent authorized by federal law. The City may from time to time elect not to regulate Grantee's rates and charges, and any such election shall not waive the City's rights to regulate in the future.
- 11.2 Rate Uniformity. Grantee's rates and charges for its Cable Services shall be uniform throughout the Service Area, except as otherwise allowed by federal law.
- 11.3 Notice of External Costs. If Grantee's rates are regulated, then Grantee shall notify the City in writing at least annually of the identity of all costs which Grantee claims are external costs resulting from this Franchise or action by the City that are potentially entitled to pass through to Subscribers under the applicable law in effect on the Effective Date or subsequent law. Such notice shall state the approximate amount of such costs on Subscribers' monthly bills and set forth the computation of such amount. Such notice shall be provided on a date set by the City, and unless changed by the City, on each annual anniversary thereof.

## **SECTION 12 PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS CHANNELS**

- 12.1 PEG Access Channels. Grantee shall provide, at its own expense, public Channels, educational Channels, and government Channels ("PEG Channels") on the Cable System as specified herein. All PEG Channels shall be placed on the Basic Service Tier of Cable Services and shall be available to all Subscribers within the first forty-five (45) Channels on the Cable System. All PEG Channels shall be solely dedicated for PEG use and shall be available twenty-four (24) hours per day throughout the term of this Franchise at no additional cost to Subscribers, the City, or PEG Programmers. Unless otherwise approved by the City, all designated PEG Channels shall be activated upon the initial deployment of the Cable System.
- 12.2 Carriage Requirements. PEG Channels may be transmitted in either an analog (6 MHz NTSC) or a digital format which is capable of carrying the same information as an analog signal, so long as at all times these Channels are transmitted in all formats used by Grantee to transmit the majority of principal local broadcast Channels that are provided to Subscribers on the Cable System.

Grantee shall deliver all PEG Channels simultaneously with the delivery to Grantee of PEG signals from the City and other PEG Programmers without change in content or format unless agreed to by the City. Grantee shall not exercise any editorial control over any public, educational, or governmental use of Channel capacity.

12.3 PEG Channel Allocation. The City Manager shall designate the specific PEG Programmers and all PEG Channel allocations. The initial allocation of PEG Channels amongst and between various PEG Programmers shall be as set forth below:

- 12.3.1 Government Channels - Two (2) government access Channels for use by the City and/or other local government entity for the distribution of programming that is in the public interest. Government Channels shall be provided as designated by the City in Exhibit "B" of this Franchise.
- 12.3.2 Educational Channels - Six (6) educational access Channels for use by local schools, universities, colleges, or other educational institutions for educational or similar programming. Initial educational Channels shall be provided as designated by the City in Exhibit "B" of this Franchise. The remaining Channel activation(s) shall be provided upon City written request. After receiving notice from the City, Grantee shall have ninety (90) days to activate or reactivate any fallow educational access Channel or Channels.
- 12.3.3 Public Channels - One (1) public access Channel and public access facility for use by the community. The public access Channel shall be provided as designated by the City in Exhibit "B" and in accordance with the Provisions of this Franchise.
- 12.3.4 City Regulations - The City may at any time upon six (6) months written notice to Grantee allocate or reallocate the usage of the PEG Channels among and between different users and PEG Programmers. This expressly includes the City's option to require several different persons to share or jointly use a given PEG Channel or conversely to allow one or more PEG Programmers currently sharing such a Channel to have a Channel on which they are the sole user.

The City Manager may from time to time adopt and revise rules and procedures for Grantee's operation of the PEG Channels for the provision of Video Programming if the PEG Channels are not being used for their respective purposes; provided, however, such rules and procedures shall apply in an equitable manner to all providers of similar services. Grantee shall use the PEG Channels solely in accordance with such rules and procedures and otherwise shall have no responsibility or control with respect to the operation of such Channels.

12.4 Signal Input Points. Grantee shall provide, without charge to the City or PEG Access Programmers or users, signal input points at the locations set forth in Exhibit "B" and up to two (2) additional locations as specified by the City. These input points shall connect the permanent studios or Channel origination centers of each PEG Channel Programmer to the Grantee thereby establishing the connection by which such Programmers provide their programming to Grantee for immediate transmission to Subscribers. The City Manager may change such locations from time to time, upon reasonable written notice to Grantee, such as if the Programmer of a Channel changes or the main studio of a Programmer moves to another location within the Service Area.

Grantee shall provide, without charge, interim remote signal input points as designated by the City, from up to nine (9) additional City or School Facility locations as specified by the City for use by PEG Programmers from a designated location such as from a community center, school, library, or other facility by which such PEG Programmers provide their programming to Grantee for immediate transmission to Subscribers. The additional remote signal input points which shall be specified by the City from time to time shall be activated and available for use within one hundred twenty (120) days of written notice by the City.

Each signal input point and remote signal input point shall, unless otherwise specified by the City, accept baseband composite video (with audio) in analog (6MHz NTSC) format. Grantee shall be solely responsible for supplying and maintaining all related transmission lines, modulators, and demodulators.

- 12.5 Educational and Governmental Channel Interconnection. In lieu of providing signal input points to designated educational and governmental Programmer sites, Grantee may interconnect, pursuant to the City's approval, with other local video service providers for the carriage of existing government and educational access Channels. In any case where Grantee pursues an interconnection for the carriage of an educational or governmental access Channel, the Grantee (as the receiving video service System) shall be responsible for the full cost of the interconnection and access Channel signal reception from the other video service provider.
- 12.6 Channel Alignment. Notwithstanding Section 12.1 above, Grantee shall pursue its best efforts to locate PEG Access Channels on the Channel locations identified in Exhibit "B" unless applicable law or contractual obligations prohibit such Channels from their specified placement. Grantee shall pursue all reasonable efforts for the placement of PEG Channels not identified in Exhibit "B" at the same Channel location as is provided by other video service providers in the City.
- 12.7 PEG Channel Relocation. Grantee shall provide the City and each PEG user at least ninety (90) days notice of any change in the Channel number on which a PEG Channel will be distributed on the Grantee's Cable System. Grantee shall reimburse all PEG users of such Channel for the reasonable costs associated with the Channel change such as new stationary, logo changes, public service announcement changes, and advertising materials to notify Subscribers and potential Subscribers of the change. Costs for PEG user Channel changes shall not exceed five thousand dollars (\$5,000) for each instance of change. Grantee shall also provide Subscriber notification of any PEG Channel changes that is consistent with Section 17.15 (Subscriber notices) of this Franchise.
- 12.8 PEG Channel Listing. Grantee shall list all PEG Channels in Grantee's published Subscriber Channel guide, if any, and, to the best extent possible, include all PEG listings in any electronic Channel guides provided by the Grantee.

- 12.9 Public Access Facilities. Grantee shall provide management, facilities, and equipment for public access video production and presentation for the public access Channel no later than three (3) years following the approval of this Franchise. All facilities for public access production shall adhere with the rules, regulations, and conditions of the City Council of the City of San Diego as currently outlined and set forth in Resolution 257330 on file at the Office of the City Clerk, and be consistent with the public access facilities and equipment provided by other franchised video service providers. Grantee shall locate public access facilities and equipment at Grantee's Business Service Center or Centers or Grantee's Primary Processing Center if the Primary Processing Center is located within the City limits of the City of San Diego. Grantee will pursue reasonable efforts to locate public access facilities and equipment at a location that predominantly serves the southern regions of the City.
- 12.10 Public Access Corporation. Grantee agrees that it shall, upon request of the City, in lieu of Public Access requirements in Section 12.9, provide annual funding equivalent to Grantee's actual annual expenses related to the provision of public access management, facilities, and equipment to a public access corporation or similar entity. Funding shall be initiated within one-hundred eighty (180) days from the request of the City for the transfer of funding to the non-profit public access corporation. Payment shall be made on an annual basis or in a method mutually agreed to between Grantee and the public access corporation. Funding of a public access corporation shall be increased annually at a rate consistent with the Consumer Price Index (CPI-Index) for the San Diego region. Grantee shall be allowed to realize credits against the annual amounts paid to the public access corporation or similar entity based on the replacement value, as determined by the City Auditor, of Grantee's public access equipment at the time it is transferred ~~over~~ to the public access corporation. Credits shall not be given for any Grantee public access facilities and equipment sold or leased for commercial use.
- 12.11 Indemnification by PEG Programming Producers and Programmers. All local producers and users of any PEG Channels or facilities shall agree in writing to hold harmless the Grantee and the City from any and all liability or other injury arising from or in connection with claims for failure to comply with applicable federal laws, rules, regulations, or other requirements of local, state, or federal authorities; for claims of libel, slander, invasion of privacy, or infringement of common law or statutory copyright; for unauthorized use of any trademark, trade name or service mark; for breach of contractual or other obligations, owing to third parties by the producer or user; and for any other injury or damage in law or equity, which claims result from the use of a PEG Channel or facility.
- 12.12 HDTV PEG Channel Conversion. At such time when Grantee provides a majority of local broadcast Channels in a high definition television (HDTV) or successor format, Grantee shall, upon the written request of the City, provide and/or convert existing PEG Channels for carriage in the HDTV or successor format. Grantee shall coordinate with the City to ensure that the HDTV format selected by the City is compatible with the format employed by Grantee. The City and each PEG Programmer shall be responsible for all costs of conversion equipment necessary to transmit HDTV signals to -Subscribers. Grantee shall modify any portion of the

Cable System necessary for Grantee to receive PEG Programmer HDTV signal from PEG Programmers for distribution on the Cable System.

- 12.13 Secure PEG Private Access Channels. In addition to the PEG Channels provided herein, Grantee shall provide secure PEG Private Access Channels for use by the City and PEG Programmers. Such Channels are to be provided on a one-for-one basis as required by at least one other franchised Cable Service provider with the City with a maximum of six (6) PEG Private Access Channels. The City and each PEG Programmer shall be responsible for the first \$35,000 of costs associated with the analog to digital format signal conversion equipment necessary to transmit digital signals to Grantee. The Grantee shall pay all costs which exceed \$35,000. Grantee shall modify any portion of the Cable System necessary for Grantee to receive PEG Programmer Private Access Channels. Grantee shall provide the City and each PEG Programmer the ability to purchase, at the City's option, the secure digital Channel terminal equipment or converters necessary for the reception of the secure digital signals at a cost or rate not to exceed Grantee's actual costs for each terminal equipment device.

### **SECTION 13 VIDEO AND INTERNET/DATA SERVICE OUTLETS TO THE CITY**

- 13.1 Cable Service to the City Facilities. Grantee shall provide, without any installation charge, one Cable Service connection outlet to each City Facility designated by the City Manager. Grantee's installation obligation to each City Facility or leased City Facility shall be for the first five hundred (500) feet from the Cable System. Installation costs for service Drops to City Facilities beyond five hundred (500) feet may be assumed by the City or other entity at a rate not to exceed the actual construction costs for the completion of each installation. Grantee shall not be obligated to provide or maintain the video service distribution system within said City Facilities. Grantee shall provide to each City Facility, at no charge to the City, the highest tier of standard Cable Services and any terminal reception or converter equipment necessary to receive such Services, including Basic Service Tier, and Cable Programming Service Tier, but not including premium Channels and pay-per-view Channels as well as any terminal reception or converter equipment necessary to receive such premium or pay-per-view Channels.
- 13.2 Data Services to City Facilities. Grantee shall provide in addition to the Service installation and Services described in Section 13.1 above, one (1) high-speed Internet connection or comparable Service offered by Grantee to each City Facility as designated by the City Manager. Each high-speed Internet or comparable Service installation site shall be provided with a minimum of one (1) high-speed broadband Internet/data modem or similar data conversion device. Grantee shall provide to each such City Facility, twenty-four (24) hours per day, seven (7) days per week at a level of Internet service equivalent to the highest speed high-speed Internet access service Grantee offers to the majority of its residential Subscribers. Grantee shall provide all equipment and Services described in this Section at no cost to the

City, and any users of this equipment, and any other beneficiaries of this equipment or of these Services.

- 13.3 Video Service to Public Schools. Grantee shall provide, without any installation charge, one Service connection outlet to each Public School within Grantee's authorized Service Area. Grantee's installation obligation to each School Facility shall be for the first five hundred (500) feet from Cable System. Installation costs for Service Drops to School Facilities beyond five hundred (500) feet may be incurred at each School's option by the City or school district at a rate not to exceed the actual construction costs for the completion of each installation. Grantee shall not be responsible to provide or maintain the Service distribution system within School Facilities. Grantee provide to each School Facility, at no charge, the highest tier of standard Services and any terminal reception or converter equipment necessary to receive and distribute such Services including Basic Service Tier, Cable Programming Service Tier and other tiers of Service exclusive of premium Channels and pay-per-view Channels.
- 13.4 Data Services To Public Schools. Grantee shall provide in addition to Service installation and Services described in Subsection 13.3 above, one (1) high-speed Internet or comparable Service connection offered by Grantee to each Public School site as designated by the City Manager. Each high-speed Internet or one (1) comparable service installation site shall be provided with high-speed Internet modem or similar data conversion devices for use by students and staff. Grantee shall provide to each such School, twenty-four (24) hours per day, seven (7) days per week, a level of Internet/data service equivalent to the highest speed high-speed Internet access/data service Grantee offers to the majority of its residential Subscribers.
- 13.5 Data Services Standards. The Services to be provided pursuant to the terms of Section 13.3 and 13.4 above are offered subject to this qualification. Data Services to City and School Facilities will be the highest speed high-speed Internet access Service Grantee offers to the majority of the residential customers for the basic residential Internet charge without a guaranteed level of Service. City acknowledges that heavy usage by other Subscribers may at certain times impact the Service received at any particular location. City further acknowledges that Grantee may elect to make available to the public different tiers of data Service with higher tiers providing certain minimum speeds based upon higher monthly charges. The City shall have the right to receive such higher tiers of Service subject to the payment of normal premium charges.
- 13.6 Additional Service Distribution. In the event that the City or any Public School site desires to have additional internal Service connections of the Cable System or Internet/ or comparable service offered by Grantee's system within each City and Public School Facility, Grantee shall make such internal Service connections at each Facility at a cost to the City or Public School equivalent to the actual construction costs for such internal installations. The City or Public School shall have the option to subcontract such internal installations at the City or Public



School's sole option and expense, provided, however, work on Grantee's System, or connections to Grantee's System, will only be performed by Grantee at City's expense.

- 13.7 Service Outlet Activation. The Cable Service and Internet service Provisions of Sections 13.1, 13.2, 13.3, and 13.4 shall be provided or otherwise made available to each City and School Facility within sixty (60) days following the initial availability of Grantee's Services to residential Subscribers within each construction phase as defined in the Construction Schedule provided for in Exhibit "A-2" and upon written request by the City.
- 13.8 No Franchise Fee Offset. The cost and/or value of the equipment and the Services provided to the entities and buildings described in this Section 13: (i) shall not constitute Franchise Fees, as defined by local, federal, or state law and this Franchise Agreement; (ii) shall not be offset against Franchise Fees or any taxes, other fees, or other type of reimbursement owed to the City; (iii) shall not be itemized by any means, including line itemization on a bill, bill surcharge, or any itemized addition to a rate paid by such a Subscriber; and (iv) shall not be a reduction to Gross Revenue.

## **SECTION 14 Institutional Network**

- 14.1 Institutional Network. As part of its Cable System construction, phasing Grantee shall complete construction of an Institutional Network (I-Net), consisting of two (2) strands of dark fiber (upstream and downstream) at no cost to the City, to all City libraries as listed in Exhibit "C" and future Library Facilities within six (6) months of notice to Grantee by City. The I-Net configuration will be included in Grantee's System so as to connect and terminate at all Library Facilities capable of being interconnected with the City's existing wide area network ("WAN"), as specified in Exhibit "C".

At City's option, the I-Net shall be configured to provide a variety of voice, video, and data Services, depending on the type and configuration of the selected end user equipment to be provided and maintained by the City at its expense.

Unless the City agrees otherwise in writing, Institutional Network Services and the I-Net, including the individual fiber optic fibers constituting all or a portion of it, (a) shall be owned and maintained by Grantee but provided for the exclusive use of the City and the City designated I-Net users, for City business purposes and (b) except as indicated in this Section, shall be provided without charge to the City. The City shall be responsible for all costs associated with interface operation and management and other terminal equipment which will be used to connect each Library Facility to I-Net at each I-Net termination point.

- 14.2 Network Activation. The initial I-Net installations shall be completed concurrent with the Construction Schedule in the Service Area in which any Library Facility is located.

- 14.3 I-Net for City Usage. The I-Net shall be used as an extension of the City's existing fiber network and shall be used for noncommercial governmental and educational purposes only.
- 14.4 I-Net Maintenance. Grantee shall provide City with a reliable level of Institutional Network Service, repair and maintenance that, at a minimum, meets the following performance standards:
- 14.4.1 Grantee shall maintain a minimum of ninety-seven percent (97%) Service availability to I-Net locations over a period of one year; provided, however, such availability factor shall not apply to Service Interruptions resulting from third party damage to the System. In no event, however, shall the rate of Service availability fall below 95% over a period of one year.
  - 14.4.2 Grantee shall respond to repair requests from City for designated critical I-Net functions and equipment within four (4) hours of the request. Grantee shall respond to other repair requests within eight (8) hours of the request.
  - 14.4.3 Grantee shall provide ongoing maintenance at its discretion, as it deems necessary. Grantee shall whenever reasonably practical provide at least one week advanced notice to any affected I-Net location of any maintenance requiring temporary interruption of Service, except in emergency situations.
  - 14.4.4 Grantee shall be responsible for all necessary inspections and performance tests of the Grantee-provided portion of the I-Net exclusive of end-user equipment . Scheduled tests shall be performed at least once per year, with test results available for City inspection.

There shall be no charge to the City for maintenance, repair, and/or replacement of the Grantee provided portion of the I-NET. Furthermore, the cost and/or value of this I-Net: (i) shall not constitute Franchise Fees, as defined by federal or state law and this Franchise Agreement; and (ii) shall not be offset against Franchise Fees or any taxes, other fees, or other type of reimbursement owed to the City.

## **SECTION 15 TECHNOLOGY CAPITAL GRANT**

- 15.1 Technology Capital Grant. Grantee shall provide the City a Technology Capital Grant in the amount of five hundred thousand dollars (\$500,000) to be utilized for the purchase and installation of capital improvements for PEG Access, Institutional Network, and other affiliated equipment and services. This Technology Capital Grant shall be paid by Grantee in two installments as follows: (1) \$250,000 sixty (60) days after the Effective Date of this Franchise; and (2) \$250,000 on or before the third year anniversary date of the Effective Date of this Franchise. The cost and/or value of these technology grants: (i) shall not constitute Franchise Fees, as defined by federal or state law and this Franchise Agreement; (ii) shall not be offset against Franchise Fees or any taxes, other fees, or other type of reimbursement owed to the

City; (iii) shall not be passed through to the City or to Subscribers by any means, including line itemization on a bill, bill surcharge, or any addition to a rate paid by such a Subscriber, unless allowed by applicable law; and (iv) shall not be a reduction to Gross Revenue.

## **SECTION 16 EMERGENCY ALERT SYSTEM**

16.1 Emergency Alert System. Grantee shall provide, without charge to the City, an emergency alert System ("Emergency Alert System") consisting of both of the following:

- 16.1.1 An all Channel alert system so as to allow audio announcements and video text crawls by the City on all Subscriber Channels. The audio announcements shall automatically override (i.e. blank) all programming otherwise being provided on such Channels and the video text crawl shall be superimposed on existing programming. The City may use either the audio announcement or the video text crawl, at its option. The City's use of such system shall be in accordance with San Diego Municipal Code, ordinances or policies and the City shall be solely responsible for the content and accuracy of any message conveyed.
- 16.1.2 An Emergency Alert System ("EAS") or successor to that system complying with all requirements imposed from time to time by the FCC, including without limitation the requirement currently set forth in the FCC regulations that a Cable Systems transmit a visual EAS message on at least one Channel and that Cable System also provide video interruption and audio EAS message on all Channels with the video further stating which Channel is carrying the visual message. Grantee shall transmit on the EAS federal, state and local EAS messages. In establishing its EAS, Grantee shall, in accordance with FCC or other applicable regulations, cooperate with the City on the use and operation by the City of the Emergency Alert System.

## **SECTION 17 CUSTOMER SERVICE STANDARDS**

- 17.1 Customer Service Compliance. With respect to Cable Service, Grantee shall at all times comply with the more stringent of the Provisions of the customer service and consumer protection Provisions of this Franchise, FCC Rules and Regulations, state law, and those adopted by the Grantee which differ from state or federal regulations and which are applied equally to all providers of similar Services.
- 17.2 Right to Amend. The City reserves the right to alter or amend the customer service standards as set forth in this Section, including adopting ordinances stricter than or covering items not presently set forth in this Section, provided, however, any such alteration or amendment shall have equitable application to any and all cable franchises in the City. The City agrees to meet and confer with Grantee on any proposed change prior to taking such action, and to provide Grantee with at least forty-five (45) days prior notice of such action.

- 17.3 Anti-Redlining. Grantee shall comply with applicable local ordinances, state law, and federal law and assure that access to Services is not denied to any group of potential residential Subscribers or group of Subscribers, because of social or economic status, race, gender, or sexual orientation.
- 17.4 Service Installation. Standard installations will be performed within five (5) business days after an order has been placed. "Standard" installations are those that are located up to one hundred fifty (150) feet from the existing distribution System. This standard shall not apply to installations requiring significant inside wall installations.

All Grantee personnel and contract personnel contacting Subscribers or potential Subscribers outside of the customer service business office shall be clearly identified through picture identification as associated with the Grantee.

- 17.5 Installations and Service Calls. The following shall apply to all Subscribers requesting installations or service: (95% of the time as measured quarterly)

Installations or service calls shall be available during Normal Business Hours to meet the needs of the residents of the community. Grantee shall offer at the Subscriber's option (1) a specific time mutually agreed upon between Subscriber and Grantee, or (2) an appointment window of no more than four (4) hours, or (3) a date certain first call of the day, last call of the day, or "call to meet" service call on a first-come, first serve basis. Nothing shall prohibit the Grantee from scheduling service calls and installation activities outside of Normal Business Hours for the express convenience of the Subscriber. Except in the case of Force Majeure, an emergency, or inclement weather preventing Service, Grantee shall not cancel an appointment with a Subscriber after 8 PM on the business day prior to the scheduled appointment.

If a Grantee representative is running late for an appointment with a Subscriber and will not be able to keep the appointment as scheduled, the Subscriber will be contacted. The appointment will be rescheduled, as necessary, at a time which is convenient for the Subscriber within a maximum two-hour window.

In the event access to the Subscriber's premises is not made available to Grantee's representative when the representative arrives during the established appointment window, the technician shall leave written notification stating the time of arrival and requesting that the Grantee be contacted again to establish a new appointment window. Grantee shall not be required to provide written notification for a new appointment window in cases where the Grantee is advised that they will not be given access to the Subscriber's premises during the appointment window.

A violation by the Grantee of the Provisions of this Section shall automatically entitle the Subscriber to one month of free standard Service or twenty-dollars (\$20) credit against Subscriber costs for basic and expanded basic service whichever is greater or alternatively, the

Subscriber may elect to pursue the rights or privileges provided for under section 1722 of the California Civil Code or other legal requirement regarding actual Subscriber losses pertaining to lost wages or other expenses resulting from the failure of the Grantee to meet service call obligations.

Grantee will notify Subscriber about the four-hour service window at the time when the Subscriber calls for Service as well as in all notifications required by Section 17.15 herein.

- 17.6 Service Disconnection. Grantee shall promptly disconnect any Subscriber who so requests disconnection. No period of notice prior to requested termination of Service shall be required of Subscribers by Grantee. No charges shall be imposed upon the Subscriber for, or related to, disconnection or for any Services delivered after the effective date of the disconnect request. If a Subscriber fails to specify an effective date for disconnection, the effective date shall be deemed to be the day following the date the disconnect request is received by the Grantee.
- 17.7 Service Interruption Response. Excluding Events of Force Majeure, the Grantee will begin working on Service Interruptions promptly and in no event later than 24 hours after the Interruption becomes known. The Grantee must begin actions to correct other Service problems the next business day after notification of the Service problem. The term "Service Interruption" means the loss of picture or sound on one or more Channels.

Grantee shall begin working on Subscriber Complaints involving impairment of degradation of signal quality (other than a Service Interruption) promptly and in no event later than the next business day after the problem has been reported to the Grantee. Grantee shall be deemed to have begun work under the Provisions of this Section when a technician begins work on the problem in question.

Grantee shall provide an affected Subscriber, upon request by the City or the affected Subscriber, with one day's free Service (equivalent to the video service they were receiving at the time of the interruption) for each day or portion thereof of Service Interruption experienced by the Subscriber.

Under Normal Operating Conditions, Grantee shall meet the standards of this Section no less than ninety-five percent (95%) of the time measured on a quarterly basis.

- 17.8 Voluntary Service Interruptions. Grantee may voluntarily interrupt Service only for good cause and for the shortest time possible. To the extent reasonably possible, any such interruption shall be preceded by twenty-four (24) hour advance notice to the Subscriber based upon the foreseeability of said Interruption.
- 17.9 Office Availability. Grantee shall maintain a full-service customer service business office located at Grantee's Business Service Center or Centers where Subscribers may pay their bills (by either cash, check, or credit/debit card), return Subscriber premise reception equipment or

comparable items, receive information on Grantee Services, or any other Grantee/Subscriber related transaction. The customer service business office shall be available for all customer services during Normal Business Hours including at least some evening hours on a designated week night and some weekend hours in accordance with most similar businesses in the community.

Grantee shall maintain at least one billing payment center separate from the customer service business office described in this Section. Any such billing payment center shall be conveniently located within the incorporated City limits where Subscribers may pay their bills (in either cash, check, or credit/debit card) and return Subscriber premise equipment or comparable items, that will be open at least from 8 AM to 5 PM Monday through Friday.

- 17.10 Telephone Availability. Grantee shall maintain a toll-free telephone number listed in the directories of the telephone companies serving the City to be so operated that Complaints and requests for repairs and adjustments may be received any time, day or night, seven days a week. Trained Grantee representatives will be available to respond to all Subscriber telephone inquiries during Normal Business Hours. After Normal Business Hours, the access line may be answered by a service. Inquiries received after Normal Business Hours must be responded to by a trained Grantee representative by the next business morning.

- 17.11 Telephone Response. Under Normal Operating Conditions, telephone answer time by a customer service representative, including wait time, shall not exceed thirty (30) seconds when the connection is made. If the call needs to be transferred, transfer time shall not exceed thirty (30) seconds. These standards shall be met no less than ninety (90) percent of the time under Normal Operating Conditions, measured on a quarterly basis.

Under Normal Operating Conditions, the Subscriber will receive a busy signal less than three percent (3%) of the time.

Under Normal Operating Conditions, no more than three percent (3%) of Subscribers calls shall be abandoned.

Grantee shall maintain equipment to satisfactorily perform surveys to measure compliance with the telephone answering standards and shall make such surveys available for the City inspection upon request.

- 17.12 Subscriber Information. Grantee shall not disclose the name and address of a Subscriber for commercial gain to be used in mailing lists or for other commercial purposes not directly related to the conduct of the business of the Grantee or Grantee's Affiliates, unless the Grantee has provided to the Subscriber written notices that clearly and conspicuously describes the Subscriber's ability to prohibit the disclosure in accordance with Section 16.14 herein.

Grantee shall honor any individual Subscriber request to deny use of Subscriber's social security number for the purposes of providing Services and shall offer reasonable alternatives to the Subscriber for such purposes.

- 17.13 Privacy and Monitoring. Grantee shall not tap or monitor, or arrange for the tapping or monitoring, or permit any other Person to tap or monitor, any cable, line, signal, input device, or Subscriber facility for any purpose, without the written authorization of the affected Subscriber. Such authorization shall be revocable at any time by the Subscriber without penalty by delivering a written notice of revocation to Grantee; provided, however, that Grantee may conduct System-wide or individually addressed "sweeps" solely for the purpose of verifying System integrity, checking for illegal taps, or billing.
- 17.14 Subscriber Privacy Notices. At the time of entering into an agreement to provide any Service to a Subscriber and at least once a year thereafter, Grantee shall provide notice in the form of a separate written document to such Subscriber which clearly and conspicuously informs the Subscriber of:
- (1) the nature of personally identifiable information collected or to be collected with respect to the Subscriber, and the nature of the use of such information;
  - (2) the nature, frequency, and purpose of any disclosure which may be made of such information, including an identification of the types of Persons to whom the disclosure may be made;
  - (3) the period during which such information will be maintained by the Grantee;
  - (4) the times and place at which the Subscriber may have access to such information;
  - (5) the limitations provided by this Section with respect to the collection and disclosure of information by a cable operator and the right of the Subscriber to enforce such limitations; and
  - (6) other information as set forth in local, state and federal law.
- 17.15 Subscriber Notices. The Grantee shall provide written information on each of the following areas at the time of installation of Service, at least annually to all Subscribers, and at any time upon request:
- (1) products and services offered;
  - (2) prices and options for all programming services, other services, equipment rental, program guides, installation fees, late fees, and other fees charged by Grantee as well as conditions of subscription;
  - (3) installation and service maintenance policies;
  - (4) instruction on how to use programming and other services;
  - (5) Channel positions of programming carried on the System;
  - (6) billing and Complaint procedures, including the identification, address and telephone number of the City;
  - (7) charges, refunds and credit procedures;
  - (8) late fee policies, disconnection, and termination of service procedures;
  - (9) customer service telephone number, address, and office hours;

- (10) employee identification;
- (11) service call response time scheduling; and availability and use of parental control Channel blocking device; and
- (12) the equipment compatibility information described in Section 17.16;
- (13) Grantee's policies and responsibilities concerning the blocking of sexually explicit programming, described in Section 17.20;
- (14) Other information in format and substance as from time to time required by Grantee.

17.16 Equipment Compatibility. In all notices required by Section 17.15, Grantee shall provide the following written information concerning Subscriber premise equipment compatibility at the time of installation of Service, at least annually to all Subscribers, and at any time upon request:

- (A) That some models of TV receivers and videocassette recorders may not be able to receive all of the Channels offered by the Grantee when connected directly with the System;
- (B) Shall indicate that Subscribers may not be able to use some special features and functions of their TV receivers and videocassette recorders; and
- (C) A listing of at least some remote control units that are compatible with the Grantees' Subscriber premises equipment that may be purchased or leased from other sources such as retail outlets. A list of representative models of remote control units currently available from retailers that are compatible with Subscriber premises equipment.

17.17 Customer Service Performance Notice. Grantee shall report annually on its performance in meeting its customer service standards. This report shall be included in the required annual notice to Subscribers.

17.18 Notices on Service Modifications. Subscribers will be notified of any changes in rates, Programming Services, or Channel positions as soon as possible through announcements on the Cable System and in writing. Notice must be given to Subscribers a minimum of thirty (30) days in advance of such changes except for changes not known sufficiently in advance by Grantee and not under Grantee control. In addition, the Grantee shall notify Subscribers thirty (30) days in advance of any significant changes in the other information required in the preceding Subscriber notice sections. Grantee shall make every reasonable effort to submit draft versions of such notices to the City fifteen (15) days in advance of their distribution to Subscribers, so that the City may review and comment upon these notices.

17.19 Franchise Authority Identification. Grantee shall print the name, address and telephone number of the City department responsible for addressing unresolved Cable Service Complaints on each Subscriber's monthly billing statement and indicate that Subscribers may contact the franchising



authority on issues not resolved through initial direct contact with the Grantee. This language shall be approved by the City prior to being provided to Subscribers.

- 17.20 Sexually Explicit Programming. In providing sexually explicit adult programming or other programming that is indecent on any Channel of its Service primarily dedicated to sexually-oriented programming, Grantee shall fully scramble or otherwise fully block the video and audio portion of such Channel so that the programming cannot be viewed or heard in an understandable manner except by those Subscribers who subscribe to such Channels.

The method selected by the Grantee to block out sexually explicit Channels shall have no negative effects on the reception of other Channels.

The notices described in Section 17.15 shall describe Grantee's obligation to block out sexually explicit Channels at no cost to the Subscriber upon request.

- 17.21 Channel Blocking. There shall be no additional charge to any Subscriber for a device by which the Subscriber can prohibit the viewing of a particular Cable Service. Grantee may charge no more than the actual costs of installation of the Channel blocking device if requested after initial order for Service.

Subscribers shall be given the opportunity of (a) not having pay-per-view or per-program Service available at all or (b) only having such Service provided upon the Subscriber providing a security code selected by the Subscriber.

- 17.22 Billing Itemization. Service billing will be clear, concise, and understandable. Bills must be fully itemized, with itemization including, but not limited to, basic service, cable programming service, premium service charges, pay-per-view charges, per program service, and equipment charges.

- 17.23 Billing Disputes. In case of a billing dispute, Grantee must resolve a written Complaint from a Subscriber to the Subscriber's reasonable satisfaction within thirty (30) days of Grantee's receipt of such a Complaint, if reasonably possible. If Grantee is unable to resolve such a Complaint within this thirty-day period, Grantee shall resolve such a Complaint to the complaining Subscriber's reasonable satisfaction as soon thereafter as reasonably possible, if such a resolution is reasonably possible.

- 17.24 Refunds and Credits. Refund checks will be issued promptly, but no later than either:

- (A) the Subscriber's next billing cycle following resolution of the request or thirty (30) days, whichever is earlier, or
- (B) the return of any equipment supplied by the cable operator if Service is terminated.

Credits for Service will be issued no later than the Subscriber's next billing cycle following the determination that a credit is warranted.

- 17.25 Security Deposit Refunds. After a six month period of time has lapsed without a delinquent payment, Grantee shall return any security deposits received from a Subscriber to ensure timely payment.
- 17.26 Service Billing. Grantee shall allow every residential Subscriber who pays his or her bill directly to the Grantee at least 15 days from the date the bill for Services is mailed to the Subscriber, to pay the listed charges unless agreed to pursuant to a residential rental agreement establishing tenancy. Subscriber payments shall be posted promptly.
- 17.27 Notices of Termination: Notices of termination shall include the following:
- (1) the name and address of the Subscriber who is delinquent;
  - (2) the amount of the delinquency;
  - (3) the date by which payment is required to avoid termination of Service; and,
  - (4) the telephone number of a representative of the Grantee who can provide additional information and handle Complaints or initiate an investigation concerning the Services and charges in question.

Grantee shall not terminate residential service for non-payment of a delinquent account unless the Grantee furnishes notice of the delinquency and impending termination at least 15 days prior to the proposed termination.

Any Service termination notice shall be mailed, postage prepaid, to the Subscriber to whom the Service is billed. Notice shall not be mailed until the 30<sup>th</sup> day after the date the bill for Services was mailed to the Subscriber. The notice of delinquency and impending termination may be part of a billing statement.

Services may only be terminated on days in which the Subscriber can reach a representative of the Grantee either in person or by phone.

Any Service terminated without good cause shall be restored without charge for the Service restoration. Good cause includes, but is not limited to, failure to pay, payment by check for which there is insufficient funds, theft of Service, abuse of equipment or System personnel, or other similar Subscriber actions.

Grantee shall not disconnect a Subscriber's Service for failure to pay amounts that are legitimately in dispute.

- 17.28 Late Fees. Grantee may not assess a late fee for non-payment of a delinquent account unless Grantee furnishes notice of the impending late fee at least 10 days prior to the date a fee is imposed. This notice shall specify the date on or after which a late fee will be charged.

The notice shall be mailed, postage prepaid, to the Subscriber to whom the service is billed. Such a notice shall not be mailed earlier than 32 days after the date the bill for Services has been mailed to the Subscriber. The notice of the late fee may be part of a billing statement.

Grantee may not assess a late fee any earlier than 42 days after the bill for Services has been mailed.

Late fees may be assessed on delinquent balances and in an amount permitted by state law. Late fees are to be assessed in an amount that is fair and reasonably related to the Grantee's cost of administering delinquent accounts.

- 17.29 Signal Quality. Upon Complaint by any Subscriber, Grantee shall have the burden to satisfy the City that a signal is being delivered which is of sufficient strength and quality to meet the standards set in FCC Rules and Regulations or other applicable standards. Individual Subscriber signal quality information shall be provided to the City within ten (10) days of written request.
- 17.30 Negative Options. Grantee shall not engage in the practice of negative option marketing, and shall not charge a Subscriber for any Service which the Subscriber has not affirmatively requested.
- 17.31 Service Call Charges. No charge shall be made to the Subscriber for any Service call after the initial installation of Service unless the problem(s) responsible for the Service request can be demonstrated by Grantee to have been:
- (A) Caused by Subscriber negligence, or
  - (B) Caused by destruction of Grantee equipment, or
  - (C) A problem identified as having been non-video service in origin, or
  - (D) Caused by a Subscriber tampering with Grantee's equipment or using it for other than the intended purpose.
- 17.32 Signal Reception Devices. Grantee shall deliver to and pick up signal reception devices, converters, remote controls, and similar Subscriber premises equipment from Subscribers at the point of Service locations. Grantee may charge for the delivery but not the pickups of the preceding items. Under Normal Operating Conditions, deliveries shall occur within five (5) business days of a Subscriber request no less than ninety-five percent (95%) of the time, measured on a quarterly basis.

If a Subscriber's signal reception device, converter, remote control, or similar Grantee owned Subscriber premises equipment is either stolen or destroyed by a Force Majeure Event, Grantee shall refund any deposit for such equipment and shall not charge the Subscriber for replacement equipment. Grantee may seek reimbursement for such equipment from applicable insurance policies and may also request appropriate insurance or law enforcement reporting documentation as proof of theft or destruction of Grantee equipment.

- 17.33 Complaints Referred by the City. If the City refers a Service Complaint from a Subscriber to Grantee for resolution, then Grantee shall initiate resolution of such Complaint within 24 hours of receipt of such referral. Grantee shall respond to the City in a satisfactory format, as approved by the City, regarding the resolution of all referred Complaints.
- 17.34 Record of Subscriber Complaints. Grantee shall maintain a written log, or an equivalent stored data record capable of reproduction in printed form, of all Cable Service related Subscriber Complaints and requests for Service requiring a Service call or further corrective action by Grantee. This log shall be in a form acceptable to the City and at a minimum list the date of each such Complaint and describe the nature of the Complaint and when and what actions were taken by Grantee in response. The log shall be kept at Grantee's customer service business office for a period of at least two (2) years and shall be available for inspection during regular business hours by the City upon written request.

Grantee shall compile and provide to the City on a quarterly basis a summary of Subscriber Complaints regarding matters addressed within this Section indicating the number of Complaints received, whether oral or written, categorized by the type of Complaint.

- 17.35 Schedule of Penalties for Breach of Customer Service Standards. Grantee acknowledges that the noncompliance with the customer service standards of this Section will harm Subscribers and the City and the amounts of actual damages will be difficult or impossible to ascertain. The City may therefore assess the following monetary penalties for any substantial or repeated failure to comply with the customer service standards set forth in this Franchise. However, in the event state law is changed from the following penalty amounts, the state law shall be controlling.
- 17.35.1 Two hundred dollars (\$200.00) for each day of each breach, not to exceed \$600.00 for each occurrence of breach;
- 17.35.2 with respect to each subsequent breach of the same nature within twelve (12) months, a monetary penalty of four hundred dollars (\$400.00) for each day of each breach, not to exceed twelve hundred dollars (\$1,200.00) for each occurrence of the breach; and
- 17.35.3 for a third or further breach of the same nature which occurs within the same twelve months, the penalty may be increased to a maximum of one thousand dollars

(\$1,000.00) for each day of each breach, not to exceed three thousand dollars (\$3,000.00) for each occurrence of breach.

The City Manager, shall have the discretion to impose penalties pursuant to this Section following prior written notice and opportunity to be heard to the Grantee. In determining what, if any, penalty to impose, the City Manager shall take into consideration the nature of the breach, the number of breaches of the number of Subscribers affected by the breach, the prior history of breaches by the Grantee, and any corrective measures the Grantee has taken or will take to protect against similar breaches. The City Manager, is authorized to establish rules and regulations to implement this Section including, but not limited to, a hearing procedure for the imposition of penalties. The City Manager's decision shall be final.

Notwithstanding the Provisions of this Section, the City Manager may waive the imposition of penalties if, within thirty (30) days following the mailing of any notice of violation to the Grantee pursuant to this Section, the Grantee cures or corrects the alleged breach of a customer service standard to the satisfaction of the City Manager.

## **SECTION 18 FCC TECHNICAL STANDARDS**

- 18.1 Compliance With Technical Standards. Grantee shall, at all times, meet or exceed FCC Technical Standards for cable television signal quality as set forth in the FCC Rules and Regulations, and subsequent amendments thereto.
- 18.2 City Option of Technical Testing. The City, at its expense and upon thirty (30) days written notice to Grantee, may test the Cable System for compliance with FCC Technical Standards as well as the electrical code and construction standards described in Section 8 herein. Grantee shall cooperate in such tests and provide access to the Cable System. Grantee shall reimburse the City for the full expense of any test which confirms non-compliance with such standards.
- 18.3 Reports. Grantee shall provide the City with a summary report of testing for compliance with such standards upon written request. Such report shall show that such testing was conducted in full compliance with FCC Rules and Regulations and other applicable standards and document any corrective measures (if any) taken to resolve areas of non-compliance.

## **SECTION 19 TRANSFER, ASSIGNMENT, OWNERSHIP, AND CONTROL**

- 19.1 Prior Written Consent is Required Before the Sale, Assignment, or Transfer of the Franchise. The Franchise and any Grantee's rights or obligations under the Franchise shall not be sold, assigned, transferred, leased or sublet, either in whole or in part, in any manner, nor shall title thereto, either legal or equitable, or any right or interest therein (other than a mortgage or other

security interest, as provided in Section 19.12), pass to or vest in any Person without prior written consent of the City Council, which shall not be unreasonably denied or delayed.

19.2 Ownership or Control Shall not be Transferred Without Prior Written Consent. Ownership or control of Grantee also shall not be transferred without the prior written consent of the City Council.

19.3 Grantee's Application. Grantee shall meet the following specifications with regard to any action or proposed action requiring consent of the City Council pursuant to this Section:

19.3.1 Grantee shall notify the City of any proposed action requiring consent of the City Council pursuant to this Section and in accordance with applicable law.

19.3.2 Grantee shall submit to the City Council an original application and four copies, which application shall comprehensively describe the terms and conditions of the action or proposed action subject to this Section and clearly state the basis on which the application should be approved. The application shall also contain all documentation and information required by Sections 19.4 and 19.5.

19.3.3 At any time during this review process, the City reserves the right to require that Grantee or any other Person involved in the action or proposed action under review to provide to the City information or documentation necessary for such review. Grantee shall assist the City in its inquiry into any proposed successor's capabilities concerning the qualifications addressed in this Section.

19.3.4 The City Council shall render a final decision on an application requiring the City's consent under this Section within 120 days after the City's receipt of a complete application (including all initial information required by the City pursuant to this Franchise Agreement), provided that: (i) if the City brings any deficiencies in the original application to the attention of the applicant(s) within thirty (30) days of the City's receipt of the original application, the running of this 120-day period shall not begin until the City's receipt of all information requested by the City; or (ii) the City Manager and Grantee mutually agree to an extension of this deadline for a final decision. Applicant shall be required to deliver any additional information requested by the City within ten (10) days of being notified.

An application for the City's consent to the types of transfers described in this Section shall be presumed to be valid and deemed approved if the City Council fails to render a final decision on the application by the deadline required in this Section or a mutually agreed deadline.

The City Council may deny such an application, upon a determination: (i) Grantee's failure to timely submit the information required by this Section; (ii) Grantee's inability or refusal to correct existing deficiencies in Grantee's performance of its Franchise

Agreement obligations brought to Grantee's attention by the City, prior to the City Council granting its approval of the application; (iii) the inability or refusal of a proposed successor in interest to the Franchise to provide prior written assurances reasonably satisfactory to the City concerning the timely and full correction of any existing deficiencies in a Grantee's performance of its Franchise obligations; or (iv) the demonstrated inability of the proposed successor to meet the duties and obligations of this Franchise.

- 19.4 Contents of Initial Application/Compliance with Franchise Terms. In an initial application, a proposed assignee or transferee must demonstrate that it possesses the legal, financial, and technical qualifications necessary to perform all the terms, conditions, and obligations under the Franchise Agreement for the remaining term thereof. The City may request, and assignee or transferee shall provide, all reasonable financial data relative to the transfer, including, but not limited to any information reasonably related to the assignee's or transferee's acquisition of Grantee's Cable System and related assets which are needed to demonstrate the qualifications of the assignee or transferee and such reasonable additional obligations required of the proposed assignee or transferee by the City Council for the specific and limited purpose of assuring the performance by the proposed assignee or transferee of all the terms, conditions, and obligations of the Franchise Agreement.

The proposed assignee or transferee shall agree to comply with all Provisions of the Franchise Agreement, as well as such reasonable requirements as the City Council may impose for the specific and limited purpose of assuring the proposed assignee's or transferee's compliance with such Provisions.

- 19.5 Ownership Change. Transfer of Franchise control occurs with a change of the Person exercising management authority over Grantee or with the obtainment of a thirty percent (30%) or greater change in voting or equity interest by a Person who previously did not have an interest of this magnitude.

19.5.1 The word "control", as used in this Section is not limited to major stockholders but includes *de facto* control (as more specifically set forth below).

19.5.2 A presumption that transfer of control has occurred, including transfer of control in fact (i.e., transfer of *de facto* control), shall arise upon the acquisition or accumulation by any Person, or group of Persons, of fifty percent (50%) of the voting interest or the equity interest of a publicly held Grantee or of the Person exercising management authority over such a publicly held Grantee, or of fifty percent (50%) of the voting interest or the equity interest of a privately held Grantee or of the Person exercising management authority over such a privately held Grantee, where the Person or group of Persons previously did not own such a fifty percent (50%) interest.

- 19.6 Transfer Without Consent. Any assignment of the Franchise or transfer of ownership or control of Grantee without the prior consent of the City Council shall be null and void unless later ratified

by the City Council and shall be deemed a material breach of the Franchise Agreement subject to procedures under Section 28 until the City Council approves the Franchise assignment or transfer in ownership or control, or if not approved, until the prior ownership, control, or other status quo ante is restored to a condition satisfactory to the City Council.

- 19.7 Unauthorized Transfer. If the City Council affirmatively acts to withhold or deny its consent to an assignment of the Franchise or transfer of ownership or control of Grantee requiring the City's approval and such action has nevertheless been effected, the City Council may revoke said Franchise and terminate any applicable Franchise Agreement unless control of Grantee or the Cable System is promptly restored to its status prior to such unauthorized action or to a status acceptable to the City Council.
- 19.8 No Waiver of City Rights. The consent or approval of the City Council to any assignment of the Franchise or transfer of control of the Franchise or of its ownership shall not constitute a waiver or release of any of the rights of the City unless the City Council specifically releases or waives such rights. In no event shall such a consent or approval result in an estoppel, release, or waiver of any power vested in the City or the waiver of the right to exercise such vested power.
- 19.9 Successor-in-Interest. In no event shall an assignment of this Franchise be approved without the successor-in-interest becoming a signatory to the existing Franchise Agreement or an amended Franchise Agreement satisfactory to the City Council and successor-in-interest.
- 19.10 Management Transfer. Grantee shall not, without the prior consent of the City Council, enter into any contract or other arrangement whereby the management of the entire Cable System will be undertaken by another entity not under the *de facto* control of the Grantee as defined in this Franchise,
- 19.11 Circumstances or Transactions not Requiring the City's Prior Consent. Notwithstanding the other Provisions of this Section, any financial institution having a pledge of Grantee or its assets for the advancement of money for the construction and/or operation of the Cable System shall have the right and obligation to notify the City that the financial institution or a designee satisfactory to the City shall take control of and operate the Cable System, in the event of a Grantee default of its financial obligations. However, said financial institution shall also agree in writing to continue Cable Service and comply with all Franchise obligations during the term the financial institution exercises control over the Cable System. Furthermore:
- 19.11.1 The granting of a security interest in any Grantee assets, or any mortgage, hypothecation, or assignment of any right, title or interest in the Cable System, or use of the Cable System as collateral in order to secure indebtedness, shall not require the consent of the City Council; and



19.11.2 The consent of the City Council shall not be required for an intra-corporate or intra-company transfer from one wholly-owned subsidiary of Grantee to another wholly-owned subsidiary of Grantee. However, in the event that a parent of Grantee desires to transfer the Franchise to another subsidiary, the City Council may require a written guarantee from the parent stating that the parent will be ultimately responsible for the performance of all Franchise Agreement obligations.

19.12 Surety, Bond, Insurance, and Similar Franchise Agreement Provisions. Before a Franchise transfer or change in control may be effective, the successor-in-interest must demonstrate to the City that the successor-in-interest has satisfied all surety, bond, insurance, and similar Provisions contained in the Franchise Agreement.

## **SECTION 20 RIGHTS RESERVED TO THE CITY**

20.1 Rights Reserved to the City. Except as specifically set forth herein, no Provision of this Franchise shall constitute a waiver or bar to the reasonable exercise of any governmental right or power of the City.

## **SECTION 21 INDEMNIFICATION**

21.1 Indemnification and Hold Harmless Agreement. With respect to any liability, including but not limited to claims asserted or costs, losses, attorney fees, or payments for injury to any Person or property caused or claimed to be caused by the acts or omissions of the Grantee or Grantee's employees, agents, and officers, arising out of, or alleged to have arisen out of, in whole or in part, or in connection with any Services performed on this Franchise, the Grantee agrees to defend, indemnify, protect, and hold harmless the City, its agents, officers, or employees from and against all liability. Also covered is liability arising from, connected with, caused by, or claimed to be caused by the active or passive negligent acts or omissions of the City, its agents, officers, or employees which may be in combination with the active or passive negligent acts or omissions of the Grantee, its employees, agents or officers, or any third party. The Grantee's duty to defend, indemnify, protect, and hold harmless shall not include any claims or liabilities arising from the sole negligence or established sole willful misconduct of the City, its agents, officers or employees.

21.2 Franchise Approval. If as a result of the City's approval and issuance of this Franchise the City is named in any legal or regulatory proceeding challenging such approval and issuance filed within one-hundred eighty (180) days of the Effective Date of this Franchise Agreement, Grantee shall indemnify the City against all costs, expenses, and fees, including attorney's fees, arising from the defense of such challenge.

21.3 Enforcement Costs. Grantee shall pay any and all reasonable costs the City incurs in enforcing the indemnity and defense provisions set forth in this Section.

## SECTION 22 INSURANCE

- 22.1 Insurance. During the term of the Franchise, Grantee shall maintain, or cause to be maintained, in full force and effect and at its sole cost and expense, the following types and limits of insurance:
- 22.2 Commercial General Liability. For all of Grantee's operations, including contractual, broad form property damage, completed operations, and independent consultant's liability, Grantee shall keep in full force and effect, during any and all work and operations, all applicable insurance to cover personal injury, bodily injury and property damage, providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence, subject to an annual aggregate of ten million dollars (\$10,000,000) for general liability, completed operations and personal injury other than bodily injury. Contractual liability shall include coverage of tort liability or another party to pay for bodily injury or property damage to a third Person or organization. Contractual liability limitation endorsement is not acceptable. The per occurrence limits require may be achieved by combining layers of excess or umbrella insurance with underlying Commercial General Liability Coverage, provided that the sum of the limits of all policies meet or exceed the required limits.
- 22.3 Comprehensive Automobile Liability. For all of Grantee's automobiles including owned, hired and non-owned automobiles, Grantee shall keep in full force and effect, automobile insurance for bodily injury and property damage providing coverage to a combined single limit of one million dollars (\$1,000,000) per occurrence. Insurance certificate shall reflect coverage for any automobile. The City shall be named as an additional insured, but only for liability arising out of this Franchise.
- 22.4 Workers' Compensation. For all of Grantee's employees who are subject to this Franchise and to the extent required by the State of California, Grantee shall keep in full force and effect, a worker's compensation policy. That policy shall provide a minimum of five hundred thousand dollars (\$500,000) of employer's liability coverage, and shall provide an endorsement that the insurer waives the right of subrogation against the City and its respective elected officials, officers, employees, agents, and representatives.
- 22.5 Additional Insured. The City and its respective elected officials, officers, employees, agents, and representatives shall be named as additional insureds. The City's additional insured status must be reflected on additional insured endorsement form, which shall be submitted to the City.
- 22.6 Cancellation or Change. All insurance required by express Provision of this Franchise cannot be canceled, non renewed, or changed except after thirty (30) calendar days prior written notice by Grantee to the City by certified mail, as reflected in an endorsement which shall be submitted to the City except for non-payment of premium, in which case ten (10) days notice will be provided.

- 22.7 Certificates of Insurance. Prior to performing any work under this Franchise, Grantee shall provide the City with all Certificates of Insurance accompanied with all endorsements. Grantee shall provide all current Certificates of Insurance with the City throughout the term of this Franchise.
- 22.8 Qualified Carriers. All insurance required by express Provision of this Franchise shall be carried only by responsible insurance companies that have been given at least an “A” & “V” rating by AM BEST, that are licensed to do business in the State of California, and that have been approved by the City which approval shall not be unreasonably withheld.

## **SECTION 23 FILING AND COMMUNICATION WITH REGULATORY AGENCIES**

- 23.1 Filings. Upon written request Grantee shall provide the City with copies of all documents which Grantee sends to the FCC or to the CPUC and all records required by Grantee to be maintained under Section 76 of the FCC regulations (47 C.F.R. § 76) or successor sections pertaining to the provision of Cable Television Services under this Franchise.
- 23.2 Lawsuits. Grantee shall provide the City with copies of all pleadings in all lawsuits pertaining to the granting of this Franchise and the operation of the Cable System to which it is a party within thirty (30) days of Grantee’s receipt of same.

## **SECTION 24 RECORDS AND REPORTS**

- 24.1 Reports. In addition to the reports required in Sections 17 and 18, Grantee shall prepare and furnish to the City Manager or designee in a form prescribed by the City Manager such reports with respect to Grantee’s operations, affairs, transactions, or property as may be reasonably necessary or appropriate to the performance of any of the duties of the City Manager or designee in connection with this Franchise. Such reports shall include, but not be limited to, number of homes passed and served, Subscriber penetration rates for any and all Services provided, Grantee compliance with PEG Channels and all Provisions of the Franchise, San Diego Municipal Code, state, and federal law.

## **SECTION 25 ALTERNATIVE DISPUTE RESOLUTION PROCEDURES**

- 25.1 Mandatory Non-binding Mediation. If a dispute arises out of, or relates to this Franchise, or the breach thereof, and if said dispute cannot be settled through normal contract negotiations, the Parties agree to first endeavor to settle the dispute in an amicable manner, using mandatory mediation under the Mediation Rules of the American Arbitration Association or any other neutral organization agreed upon before seeking recourse in a court of law.
- 25.2 Mandatory Mediation Costs. The expenses of witnesses for either side shall be paid by the Party producing such witnesses. All other reasonable expenses of the mediation, including required traveling and expenses of the mediator, and the cost of any proofs or expert advice

produced at the direct request of the mediator, shall be borne equally by the Parties, unless they agree otherwise.

- 25.3 Selection of Mediator. A single mediator that is acceptable to both Parties shall be used to mediate the dispute. The mediator will be knowledgeable in construction aspects and may be selected from lists furnished by the American Arbitration Association (AAA) or any other agreed upon mediator. To initiate mediation, the initiating Party shall serve a request for mediation on the opposing Party. If the mediator is selected from a list provided by AAA, the initiating party shall concurrently file with AAA a request for mediation along with the appropriate fees; a list of three requested mediators marked in preference order, and a preference for available dates.
- 25.3.1. If AAA is selected to coordinate the mediation (Administrator), within ten (10) working days from the receipt of the initiating Party's request for mediation, the opposing Party shall file the following: a list of preferred mediators listed in preference order, after striking any mediators to which they have any factual objection, and a preference for available dates. If the opposing party strikes all of initiating Party's preferred mediators, opposing Party shall submit a list of three preferred mediators listed in preference order to initiating Party and Administrator. Initiating Party shall file a list of preferred mediators listed in preference order, after striking any mediator to which they have any factual objection. This process shall continue until both sides have agreed upon a mediator.
- 25.3.2. The administrator will appoint or the Parties shall agree upon the highest, mutually preferred, mediator from the individual parties' lists who is available to serve within the designated time frames.
- 25.3.3. If the parties agree not to use AAA, then a mutually agreed upon mediator, date and place for the mediation shall be agreed upon.
- 25.4 Conduct of Mediation Sessions. Mediation hearings will be conducted in an informal manner and discovery will not be allowed. All discussions, statements, or admissions will be confidential to the Party's legal position. The Parties may agree to exchange any information they deem necessary.
- 25.4.1. Both Parties must have an authorized representative attend the mediation. Each representative must have the authority to recommend entering into a settlement. Either Party may have attorney(s) or expert(s) present. Upon reasonable demand, either Party may request and receive a list of witnesses and notification whether attorney(s) will be present.
- 25.4.2. Any agreements resulting from mediation shall be documented, in writing. All mediation results and documentation, by themselves, shall be "non-binding" and inadmissible for any purpose in any legal proceeding, unless such admission is otherwise agreed upon, in

writing, by both Parties. Mediators shall not be subject to any subpoena or liability and their actions shall not be subject to discovery.

## **SECTION 26 ABANDONMENT**

- 26.1 Abandonment of Service. After Grantee has established Service pursuant to this Franchise in the Service Area, such Service shall not be suspended or abandoned in any part of the Service Area unless the suspension or abandonment is authorized by the City Council.

Whenever Grantee shall file with the City Council a written application alleging that the public interest, convenience, and necessity no longer require that Grantee furnish Service pursuant to this Franchise to any part of the Service Area, the City Council, at a public hearing, shall take evidence upon that question and shall make a finding with respect to it. Notice of the hearing shall be given by Grantee in writing to each Subscriber in the part of the Franchise area in question at least fifteen (15) days prior to the date scheduled for the hearing. If the City Council shall find that the public interest, convenience, and necessity no longer require that Grantee furnish Service, the City Council, after hearing as provided herein, shall authorize suspension or abandonment of Service upon such reasonable terms and conditions as may be prescribed by the City Council.

- 26.2 Removal or Abandonment of Franchise Property. In the event that any Franchise property has been installed without complying with the requirements of this Franchise, Grantee shall, at the request of the City Manager, and at its sole cost and expense, either install the Franchise property in compliance with this Franchise or remove promptly from the Public Right-of-Way all Franchise property other than any which the City Manager may permit to be abandoned in place. In the event of any such removal, Grantee shall promptly restore to a condition satisfactory to the City Manager the Public Right-of-Way or other public places in the City from which the Franchise property has been removed.

Franchise property to be abandoned in place shall be abandoned in the manner prescribed by the City Manager. Upon permanent abandonment of any Franchise property in place, Grantee shall submit to the City Manager an instrument satisfactory in form to the City Attorney, transferring to the City the ownership of the Franchise property abandoned.

## **SECTION 27 SECURITY FUND**

- 27.1 Required Security Fund. Prior to providing Service to any Subscriber, Grantee shall establish and provide to the City a Security Fund, as security for the faithful performance by Grantee of all provisions of this Franchise Agreement. The Security Fund shall be available to the City to satisfy all claims, liens, fees, and/or taxes Grantee owes the City and which arise by reason of operation, or maintenance of the Cable System, and to satisfy any actual or liquidated damages arising out of a breach or default pertaining to the Franchise Agreement.

The Security Fund shall consist of any one of two (2) instruments which shall be in the amount of at least two hundred fifty thousand dollars (\$250,000.00) and shall either be in the form of an irrevocable, standby letter of credit, or a cash deposit established in a local bank in an interest-bearing account payable to the order of the City as trustee for Grantee, with all interest distributed to Grantee.

The Security Fund shall be maintained at a minimum level of two hundred fifty thousand dollar (\$250,000.00) level throughout the term of this Franchise. Grantee shall pay all fees or other charges required to keep this letter of credit or cash portion in force and shall, within thirty (30) days of any draw by the City, restore the face value of this instrument to the original amount. Failure to replenish this portion of the Security Fund shall be deemed a material breach of this Franchise Agreement.

- 27.2 Issuing Institution Approval. The Security Fund instruments must be issued by an institution approved by the City Manager and must incorporate wording approved by the City Manager, enabling the City to draw such sums from time to time as the City may find necessary to satisfy any defaults of Grantee or to meet any payments due the City under or in connection with this Franchise, upon ten (10) days written notice to Grantee. All such Security Fund instruments shall further require the provision of thirty (30) days written notice by certified mail by its issuer to the City of any pending expiration or cancellation, or other language acceptable to the City Attorney; with respect to the Security Fund, the delivery of said written notice shall, without further cause, constitute reason for the City to draw the full sum to be held in its own accounts until such letter of credit or Security Fund shall be re-established in good and satisfactory form to the City.
- 27.3 Right of City to Draw on Security Fund. Provided the City follows the procedures described in Section 28, herein, the City may draw upon the Security Fund. Grantee, prior to any such withdrawal, shall not initiate litigation or administrative action in a non-City administrative forum in order to prevent or impair the City from drawing against the Security Fund. In the event Grantee reasonably believes any such withdrawal of Security Funds is improper, Grantee's only recourse shall be through legal or administrative action initiated after the City has drawn upon the Security Fund. If such action or taking by the City is found to be improper by any court or Agency, Grantee shall be entitled to a refund of the Security Funds plus interest and/or any other award awarded by such a court or Agency.
- 27.4 No Waiver of Bonding Requirements. Nothing herein shall constitute a waiver of the normal permit and bonding requirements pertaining to all entities working within the City's Public Rights-of-Way.

## **SECTION 28 PROCEDURES FOR ADDRESSING FRANCHISE VIOLATIONS**

- 28.1. Franchise Violations. If Grantee violates any Provision in this Franchise Agreement other than Section 8.14, the City may, in addition to any other legal remedies available:

- 28.1.1 Assess against Grantee liquidated damages in the amounts and for the reasons set forth in this Franchise Agreement, with the exception of the liquidated damages and violations described in Section 10.7 and Section 19.7 (for which the City will not be required to provide prior notice on an intent to assess liquidated damages), the City shall not assess liquidated damages unless a violation has been determined to occur under this Section. All liquidated damages may be withdrawn from the Security Fund, and shall not constitute a waiver by the City of any other right or remedy the City may have under this Franchise Agreement or applicable law, including without limitation, the City's right to recover from Grantee such additional damages, losses, costs and expenses, including actual attorney's fees incurred by the City due to Grantee's failure to timely cure the applicable Franchise violation.
- 28.1.2 Revoke this Franchise Agreement in accordance with this Section.
- 28.2. Procedures for Determining Franchise Violations. Procedures for determining whether a Franchise violation has occurred shall be as follows:
- 28.2.1 Prior to imposing any sanction against Grantee specified in this Franchise Agreement, the City Manager shall give Grantee notice and opportunity to be heard on the matter, in accordance with the following procedures.
- 28.2.2 The City Manager shall first notify Grantee of the alleged violation in a written Notice and Order that Grantee provide the City Manager with written evidence of having taken action fully correcting the deficiency or evidence that no violation exists. Such Notice and Order shall: (i) refer to all Provisions of this Franchise Agreement, rules, or regulations violated; (ii) refer to the dates of the alleged violations; and (iii) shall enumerate any consequences should the Grantee fail to comply with the terms and deadlines as prescribed in the Notice and Order. Grantee's response shall be due not less than thirty (30) calendar days after Grantee's receipt of this notification concerning any alleged types of violations.
- 28.2.3 Such proceedings shall terminate and no penalty or other sanction shall be imposed against Grantee, if the City Manager finds that:
- (A) Grantee has corrected the alleged violation; or
  - (B) Grantee has diligently commenced correction of such alleged violation after notice thereof and is diligently proceeding to fully remedy such alleged violation pursuant to a schedule reasonably satisfactory to the City Manager; or
  - (C) evidence shows that there is no violation.

- 28.2.4 If Grantee fails to comply with the terms of the Notice and Order within the time period specified therein, the City Manager shall appoint an Enforcement Hearing Officer and establish a date, time and place for an Enforcement Hearing within thirty (30) days of the date for compliance in the Notice and Order. The Enforcement Hearing Officer shall hear and consider relevant evidence, and thereafter render findings and a decision.
- 28.2.5 Such proceedings shall terminate and no penalty or other sanction may be imposed against Grantee, if the Enforcement Hearing Officer finds that:
- (A) Grantee has corrected the alleged violation; or
  - (B) Grantee has diligently commenced correction of such alleged violation after notice thereof and is diligently proceeding to fully remedy such alleged violation pursuant to a schedule reasonably satisfactory to the City Manager; or
  - (C) no material violation has occurred.
- 28.2.6 The Enforcement Hearing Officer may issue an Administrative Enforcement Order imposing one (1) or more of the remedies provided in this Franchise Agreement as the Enforcement Hearing Officer deems appropriate, if the Enforcement Hearing Officer finds that a violation exists and that Grantee:
- (A) has not corrected the violation in a satisfactory manner; or
  - (B) has not diligently commenced correction of such violation after notice thereof and is not diligently proceeding to fully remedy such violation.
- 28.3. Assessment of Liquidated Damages. Liquidated damages shall be assessed as follows:
- 28.3.1 Grantee understands and agrees that failure to comply with any time and performance requirements as stipulated in this Franchise Agreement, will result in damage to the City, and that it is and will be impracticable to determine the actual amount of such damage in the event of delay or nonperformance; therefore, the Parties to this Franchise Agreement hereby agree to the liquidated damages specified below. Except with respect to the liquidated damages addressed in Sections 10.7 and 19.7, liquidated damages may only be assessed following notice to Grantee and an opportunity to cure, as provided in this Section. Liquidated damages shall not be assessed if Grantee's failure to comply with an obligation of this Franchise Agreement is caused by an event of Force Majeure. Liquidated damages will be assessed on a daily basis for each violation or series of violations under this Franchise Agreement.



28.3.2 If the City finds that a Franchise violation exists and that Grantee has not cured, or commenced to cure, said violation in a satisfactory manner , within the period of time specified in the Administrative Enforcement Order, the City may assess liquidated damages, assessable from the Security Fund, for the following reasons and in the following amounts:

- (A) For the failure to complete the Cable System or I-Net system construction required by Sections 6.1 and 14.1 of this Franchise Agreement, unless the City Council specifically approves a construction delay in writing; Grantee shall pay one thousand dollars (\$1000.00) per day for each day, or part thereof, the construction delinquency continues;
- (B) For the failure to provide in a continuing manner any of the types of the PEG Access Services set forth in this Franchise Agreement, unless the City Council specifically approves a delay or change or Grantee has obtained a modification of its obligation; Grantee shall pay one thousand dollars (\$1000.00) per day for each day, or part thereof, that any such type of noncompliance continues;
- (C) For the violation of any customer service standard set forth in Section 17 of this Franchise Agreement; the liquidated damages shall be as provided in Section 17.35;
- (D) For the failure to test, analyze, and report on the performance of the Cable System as required herein; Grantee shall pay one hundred dollars (\$100.00) per day for each day, or part thereof, that such noncompliance continues;
- (E) For the failure to provide, upon written request, data, documents, reports, or information required to be supplied under this Franchise Agreement; Grantee shall pay fifty dollars (\$50.00) per day for each day, or part thereof, that each violation occurs or continues;
- (F) For any other Franchise Agreement violation not listed in this Section; Grantee shall pay two hundred fifty dollars (\$250.00) for each day, or part thereof, that each violation occurs or continues, provided that all violations of a similar nature occurring within the same two-week period of time shall be considered one (1) incident for which daily liquidated damages may be assessed;

28.4. Revocation of Franchise. The City Council may revoke this Franchise and rescind all rights and privileges associated with the Franchise when:

28.4.1 Grantee has engaged in a material breach of this Franchise Agreement and this material breach continues after the date specified in the Administrative Enforcement Order. For

the purposes of this Franchise Agreement, a material breach of the Franchise Agreement shall include, but not be limited to the following actions or omissions:

- (A) Grantee has failed to provide or maintain in full force and effect the insurance coverage and/or Security Fund required by this Franchise Agreement, or has failed to replenish the Security Fund, as required by Section 27.1 herein;
- (B) Grantee has violated an Administrative Enforcement Order;
- (C) Grantee has engaged in a course of conduct which constitutes a fraud or deceit upon the City, Subscribers, or any other Person;
- (D) Grantee has become insolvent, unable or unwilling to pay its debts, or is adjudged bankrupt;
- (E) Grantee has failed to comply with the standards, terms, or schedule for Cable System construction, as required by this Franchise Agreement;
- (F) Grantee has abandoned the Cable System, in whole or in part, without the prior written consent of the City;
- (G) Grantee has repeatedly failed to comply with any of the Provisions in this Franchise;
- (H) Grantee has undertaken an action requiring approval or consent of the City Council, including the transferring or changing of control of the Franchise, without having first obtained the City Council's prior approval or consent;
- (I) Grantee has failed to cooperate fully and faithfully with any lawful investigation, audit or inquiry conducted by the City or any Person lawfully acting on behalf of the City or any Agency with jurisdiction over this Franchise;
- (J) Grantee has issued a written misrepresentation, intentionally made by or on behalf of Grantee in a proposal for this Franchise, or in connection with the negotiation or renegotiation of a Franchise, or any amendment or other modification to a Franchise, or in connection with an application, request, or negotiation for a Franchise transfer or change in control;
- (K) Grantee knowingly makes a material false entry or false statement in any document to be distributed to the City or upon which the City may rely;
- (L) Grantee, any Affiliate, any director or executive officer of Grantee or of an Affiliate, or any employee or agent of Grantee or of any Affiliate acting under the

express direction or with the actual consent of Grantee, its directors or officers, has been convicted of a criminal offense, including, without limitation, bribery, fraud, arising out of or in connection with this Franchise or the award of this Franchise, provided that the right to terminate the Franchise in the event of said conviction shall arise only with respect to any of the foregoing types of convictions of Grantee itself and, in the event of the conviction of any other Persons specified in this Section, only if Grantee fails to disassociate itself, from or terminate the employment of, such other Persons with respect to activities in the Service Area or any other activities affecting the Cable System within the Service Area, within thirty (30) days after the time in which appeals from such conviction may be taken, if not taken, or within thirty (30) days following the final determination of all appeals which are in fact taken;

- (M) Any City officer, official, board member, employee, or agent is convicted of the offense of bribery or fraud with respect to this Franchise and which arises out of or in connection with any intentional action by Grantee, any Affiliate, any director or executive officer of Grantee or of any Affiliate, or of any employee or agent of Grantee or of any Affiliate acting under the express direction or actual consent of Grantee or any of the foregoing, which act was undertaken for the benefit of Grantee.

28.4.2 After the City has satisfied the procedures set forth in this Section, the City Manager will request the City Council to revoke this Franchise. The City Council shall begin a public hearing within sixty (60) days of the City Manager's request to determine whether this Franchise should be revoked.

28.5 Remedies Not Exclusive. The rights and remedies of the City set forth in this Franchise Agreement shall be in addition to, and not in limitation of, any other rights and remedies available to the City by law or in equity. The City and Grantee understand and intend that such remedies shall be cumulative to the maximum extent permitted by law and the exercise by the City of any one or more of such remedies shall not preclude the exercise by the City, at the same or different times, of any other such remedies for the same uncured material breach.

## **SECTION 29 RENEWAL**

29.1 Renewal Rights and Remedies. The City shall have all available rights and remedies with respect to receiving a request to renew the Franchise granted herein, subject to applicable federal (including FCC Rules and Regulations) and state law as they exist at such time. Any renewal, denial of renewal and the consequences of and terms and conditions with respect to any such renewal or denial of renewal shall be subject to federal (including FCC Rules and Regulations) and state law in effect at such time.

## SECTION 30 GENERAL PROVISIONS

- 30.1 Notices. Any notice, required to be given hereunder shall be in writing, and may be served personally or by United States mail, postage prepaid, addressed to Grantee at:

Western Integrated Networks, of California, Operating LLC  
Attn:  
President and CEO  
2000 S. Colorado Blvd., Suite 2-670  
Denver, CO 80222

or at such other address designated in writing by Grantee; and to the City as follows:

City of San Diego  
Cable Television Office  
1200 Third Ave. Suite 250  
San Diego, CA 92101

Or to any mortgagee, trustee, or beneficiary, as applicable, at such appropriate address designated in writing by the respective party.

Any party entitled or required to receive notice under this Franchise may by like notice, designate a different address to which notices shall be sent.

- 30.2 Venue and Compliance with Controlling Law. Grantee shall comply with all laws, ordinances, regulations, and policies of the federal, state, and local governments applicable to this Franchise. The laws of the State of California shall govern and control the terms and conditions of this Franchise Agreement. The venue for any suit or proceeding concerning this Franchise, the interpretation of application of any of its terms, or any related disputes shall be in the County of San Diego, State of California.
- 30.3 Conflicts. Where federal and state laws or regulations conflict with this Franchise Agreement, this Franchise Agreement shall govern to the extent not preempted by the conflicting federal and state laws or regulations. Where this Franchise Agreement conflicts with other City ordinances or City laws or regulations, this Franchise Agreement shall govern, except where the City, in the future, adopts additional ordinances, laws, or regulations, consistent with the City's police powers, taxation powers, powers of eminent domain, and other non-delegable powers.
- 30.4 No Waiver. No failure of either the City or the Grantee to insist upon the strict performance by the other of any covenant, term or condition of this Franchise, Agreement nor any failure to exercise any right or remedy consequent upon a breach of any covenant, term, or condition of this Franchise Agreement, shall constitute a waiver of any such breach of such covenant, term or condition. No waiver of any breach shall affect or alter this Franchise, and each and every

covenant, condition, and term hereof shall continue in full force and effect to any existing or subsequent breach. The failure of the City on one or more occasion to exercise a right under the Franchise Agreement or any applicable law, ordinance, rule, or regulation shall not constitute a waiver of such right unless the City has specifically waived such right in writing and the term “waive” or its equivalent is used in such a writing.

- 30.5 Legal Fees. Each Party to this Franchise shall bear its attorney’s fees and costs arising from that Party’s own counsel in connection with this Franchise. In the event of any dispute between the Parties, which is resolved by mediation, arbitration or litigation, the prevailing Party shall be awarded, and the non-prevailing Party shall pay, all the prevailing Party’s reasonable attorneys fees, costs and expenses, including the cost of expert witnesses.
- 30.6 Severability. Each section, part, term, covenant, or condition of this Franchise Agreement shall be considered severable, and if, for any reason, any section, part, term, covenant, or condition herein is determined to be invalid and contrary to, or in conflict with, any existing or future law or regulation, such invalidity, contravention, or conflict shall not impair the operation or affect the remaining portions, section, part, term, covenant, or condition of this Franchise Agreement, and the latter will continue to be given full force and effect and bind the Parties hereto; and said invalid section, part, term, covenant, or condition shall be deemed not to be part of this Franchise.
- 30.7 Captions. The Franchise Table of Contents, section headings, and captions for various articles and paragraphs shall not be held to define, limit, augment, or describe the scope, content, or intent of any or all parts of this Franchise Agreement. The numbers of the paragraphs and pages of this Franchise Agreement, if not consecutive, are intentional and shall have no effect on the enforceability of this Franchise Agreement.
- 30.8 Entire Understanding. This Franchise Agreement contains the entire understanding of the Parties. Grantee and the City, by signing this Franchise Agreement, agree that there is no other written or oral understanding between the Parties with respect to the matters covered in this Franchise Agreement. Each of the Parties to this Franchise Agreement agrees that no other Party, agent, or attorney of any other Party has made any promise, representation, or warranty, whatsoever, which is not contained in this Franchise Agreement.

The failure or refusal of any Party to read the Franchise Agreement or other documents, inspect the poles and property which are the subject of this Franchise Agreement, and obtain legal or other advice relevant to this transaction, constitutes a waiver of any objection, contention, or claim that might have been based on these actions. No modification, amendment, or alteration of this Franchise Agreement will be valid unless it is in writing and signed by all Parties.

- 30.9 City Approval. The approval or consent of the City, wherever required in this Franchise, shall mean the written approval or consent of the City Council, or the City Manager as specified. The

approval or consent of the City, whether by the City Manager or the City Council shall not be unreasonably withheld, conditioned or delayed.

- 30.10 Company Authority. Each individual executing this Franchise Agreement on behalf of Grantee represents and warrants that he/she is duly authorized to execute and deliver this Franchise Agreement on behalf of said limited liability company or corporation in accordance with the limited liability company operating agreement, and that this Franchise Agreement is binding upon the company in accordance with its terms, and that all steps have previously been taken to qualify Grantee to do business and perform operations undertaken pursuant to the grant of this Franchise Agreement.
- 30.11 Covenants and Conditions. All Provisions of this Franchise Agreement expressed as either covenants or conditions on the part of the City or the Grantee, shall be deemed to be both covenants and conditions.
- 30.12 Municipal Powers. Nothing contained in this Franchise Agreement shall be construed as a limitation upon the powers of the City as a chartered city of the State of California.
- 30.13 Drafting Ambiguities. The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Franchise Agreement, and the decision of whether or not to seek advice of counsel with respect to this Franchise Agreement, is a decision which is the sole responsibility of each Party. This Franchise Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Franchise Agreement.

## **SECTION 31 EQUAL OPPORTUNITY CONTRACTING PROGRAM**

- 31.1 Equal Opportunity Contracting. Grantee acknowledges and agrees that it is aware of, and will comply with the City Manager or designee Ordinance No. 18173 (San Diego Municipal Code Sections 22.2701 through 22.2708, as amended), EQUAL EMPLOYMENT OPPORTUNITY OUTREACH PROGRAM, a copy of which is on file in the Office of the City Clerk and by this reference is incorporated herein. Grantee and all of its subcontractors are individually responsible to abide by its contents.

Grantee will comply with Title VII of the Civil Rights Act of 1964, as amended; Executive Orders 11246, 11375, and 12086; the California Fair Employment Practices Act; and any other applicable federal and state laws and regulations hereafter enacted. Grantee will not discriminate against any employee or applicant for employment on any basis prohibited by law.

Grantee submitted and the City acknowledges receipt of a current Work Force Report or a current Equal Employment Opportunity (EEO) Plan as required by Section 22.2705 of the San Diego Municipal Code, which sets forth the actions that Grantee will take to achieve the City's commitment to equal employment opportunities.

Grantee agrees to insert the foregoing Provisions in all subcontracts for any work covered by this Franchise Agreement so that such Provisions will be binding upon each subcontractor. Grantee agrees that compliance with EEO Provisions established through the authority of both Parties will be implemented, monitored, and reviewed by the City's Equal Opportunity Contracting Program staff.

- 31.2 Equal Opportunity Contracting Local Business and Employment. Grantee acknowledges that the City of San Diego seeks to promote employment and business opportunities for local residents and firms in all City contracts. Grantee will, to the extent legally possible, solicit applications for employment, and bids and proposals for subcontracts, for work associated with this Franchise Agreement from local residents and firms as opportunities occur. Grantee agrees to hire qualified local residents and firms whenever feasible.

Grantee understands that failure to comply with the above requirements and/or submitting false information in response to these requirements may result in termination of this Franchise Agreement and debarment from participating in City contracts for a period of not less than one (1) year.

## **SECTION 32 DRUG-FREE WORKPLACE**

- 32.1 Drug-Free Workplace. Grantee shall be required to abide by the omnibus drug legislation passed by Congress on November 18, 1988, by adopting and enforcing a policy to maintain a drug-free workplace by doing all of the following:

- 32.1.1 Publish a statement notifying employees that the unlawful manufacture, distribution, dispensation, possession, or use of controlled substances as defined in schedules I-V of section 202 of the controlled Substances Act (21 U.S.C., & 812) is prohibited in the Person's or organization's workplace and specifying the actions that be taken against employees for violations of the prohibition.
- 32.1.2 Establishing a drug-free awareness program to inform employees about all of the following:
- (1) The dangers of drug abuse in the workplace.
  - (2) The Grantee's policy of maintaining a drug-free workplace.
  - (3) Any available drug counseling, rehabilitation, and employees assistance programs.
  - (4) The penalties that may be imposed upon employees for drug abuse violations.

## **SECTION 33 DISABLED ACCESS COMPLIANCE**

- 33.1 Disabled Access Compliance. Grantee agrees to comply with applicable regulations within the California Government Code, Sections 11135-11139.5; the Federal Rehabilitation Act of 1973,

Section 504, Title V; the Americans with Disabilities Act of 1990 (ADA); and any other applicable state and federal laws and regulations hereafter enacted protecting the rights of people with disabilities. Grantee's compliance shall include, but not necessarily be limited to, the following:

- 33.1.1 Grantee shall not discriminate against qualified persons with disabilities in any aspects of employment, including recruitment, hiring, promotions, conditions and privileges of employment, training, compensation, benefits, discipline, layoffs, and termination of employment.
- 33.1.2 No qualified individual with a disability may be excluded on the basis of disability from participation in, or be denied the benefits of, services, programs, or activities of Grantee.
- 33.1.3 Grantee shall post a statement addressing the requirements of the ADA in a prominent place at the work site.
- 33.1.4 Where required by law, Grantee shall comply with City's disabled access requirements by bringing up to code and making accessible any areas of the premises which deny access to disabled persons. All such improvements and alterations shall be at the sole cost of Grantee.

Grantee understands that failure to comply with the above requirements and/or submitting false information in response to these requirements shall constitute a default under this Franchise.

(Balance of this page intentionally left blank)



**SECTION 34. EFFECTIVE DATE**

34.1 Effective Date. This Agreement shall take effect and be in force on the Effective Date of this Ordinance which is the thirtieth (30<sup>th</sup>) day from and after its adoption by the City Council.

**SECTION 35: SIGNATURES**

IN WITNESS WHEREOF, this Franchise Agreement is executed by the City of San Diego, acting by and through its City Manager, and by Western Integrated Networks of California, Operating L.L.C., acting by and through its lawfully authorized directors.

**THE CITY OF SAN DIEGO**

By \_\_\_\_\_

Its \_\_\_\_\_

Date \_\_\_\_\_, 2000

I HEREBY CERTIFY I can legally bind WESTERN INTEGRATED NETWORKS OF CALIFORNIA, OPERATING L.L.C., and that I have read all of this Agreement, this 15th day of May, 2000.

**WESTERN INTEGRATED NETWORKS OF CALIFORNIA, OPERATING L.L.C.**

By \_\_\_\_\_ [signed] \_\_\_\_\_  
Authorized Representative

Title \_\_\_\_\_ William J. Mahon, Jr. \_\_\_\_\_  
Senior Vice President

I HEREBY APPROVE the form and legality of the foregoing Agreement this 30th day of May, 2000.

CASEY GWINN, City Attorney

By \_\_\_\_\_ [signed] \_\_\_\_\_  
Deputy City Attorney

# City of San Diego Construction Phases

The map illustrates the City of San Diego's construction phases, divided into six distinct areas. Phase 1 is located in the southern part of the city, including areas like Coronado and La Playa. Phase 2 is in the central part, covering areas like La Mesa and San Diego. Phase 3 is in the western part, including areas like Pacific Beach and Mission Beach. Phase 4 is in the northwestern part, including areas like Leucadia and Solana Beach. Phase 5 is in the northeastern part, including areas like Poway and Ramona. Phase 6 is in the southern part, including areas like Imperial Beach and Brown Field. The map also shows major highways, parks, and surrounding cities. A legend box in the bottom right corner provides map details.

Map 10.00  
Wed Jan 19 08:57 2000  
Scale 1:300,000 (at center)  
5 Miles  
10 KM

© 1998 DeLorme, Street Atlas USA

<b>EXHIBIT A-2</b>
--------------------

## **CONSTRUCTION SCHEDULE**

Exhibit A-1, the Phasing Map describes the initial proposed order for construction of the System which will be amended as necessary to comply with Section 5. Grantee shall be held to the following schedule for construction:

1. Twenty-five percent of the total Service Area will be served on or before the end of the 24<sup>th</sup> month after City issues Notice to Proceed with construction.
2. Fifty percent of the total Service Area will be served on or before the end of the 36<sup>th</sup> month after City issues Notice to Proceed with construction.
3. Seventy-five percent of the total Service Area will be served on or before the end of the 48<sup>th</sup> month after City issues Notice to Proceed with construction.
4. One hundred percent of the total Service Area will be served on or before the end of the 60<sup>th</sup> month after City issues Notice to Proceed with construction.

If a discovery is made of an archaeological or paleontological object, including, but not limited to, dwelling sites, stone implements or other artifacts, animal bones, human bones, fossils or any item with cultural significance, in an area not designated during the CEQA review process, Grantee shall be entitled to an extension of time in the Construction Schedule for the resulting unmitigatable delay in construction.

<b>EXHIBIT B</b>
------------------

**PUBLIC, EDUCATIONAL, AND GOVERNMENT ACCESS**

**PEG CHANNEL ALLOCATION**

**Government Access**

- 1 Channel for City of San Diego use
- 1 Channel for City of San Diego use for additional governmental programming including programming provided by other government jurisdictions.

**Educational Access**

- 1 Channel for use by the County Office of Education
- 1 Channel for use by the University of California
- 1 Channel for use by San Diego State University
- 1 Channel for educational access use as determined by the City
- 1 Channel for educational access use as determined by the City
- 1 Channel for educational access use as determined by the City

**Public Access**

- 1 Channel for public access use

**SIGNAL INPUT POINTS**

**Government Access**

- City Government Access Channel 1
  - Location: City of San Diego City Hall - 202 C Street 92101
- City Government Access Channel 2
  - Location: County of San Diego Administration Center - 1600 Pacific Coast Hwy 92101

**Educational Access**

- Educational Access Channel 1
  - Location: County Office of Education ITV - 6401 Linda Vista Rd. 92111
- Educational Access Channel 2
  - Location: UCSD TV - 9500 Gilman Drive 92093
- Educational Access Channel 3
  - Location: SDSU 5500 Campanile Drive 92182
- Educational Access Channel 4
  - Locations: To be determined by the City

## EXHIBIT C

### INSTITUTIONAL NETWORK

#### INSTITUTIONAL NETWORK CONNECTION SITES

##### Library Sites

###### **Central Library**

820 E. Street  
92101 (or relocated site)

###### **Balboa**

4255 Mt. Abernathy Ave.  
92117

###### **Beckwourth**

721 San Pasqual St  
92113

###### **Benjamin**

5188 Zion St.  
92120

###### **Carmel Mtn Ranch**

12095 World Trade Drive  
92128

###### **Carmel Valley**

3919 Townsgate Drive  
92130

###### **Clairemont**

2920 Burgener Blvd.  
92110

###### **College Heights**

4710 College Ave  
92115

###### **Kensington/**

###### **Normal Heights**

4121 Adams Ave  
92116

###### **La Jolla/Riford**

7555 Draper Ave

92037

###### **Linda Vista**

2160 Ulric St  
92111

###### **Logan Heights**

8111 S. 28<sup>th</sup> St.  
92113

###### **Malcolm X Library**

5148 Market St.  
92114

###### **Mira Mesa**

8405 New Salem St.  
92126

###### **Mission Hills**

925 W. Washington St.  
92103

###### **Mission Valley**

2123 N. Mission City Pkwy  
92116

###### **North Clairemont**

4616 Clairemont Drive  
92117

###### **North Park**

3795 31<sup>st</sup> St.  
92104

###### **North University City**

tba Shoreline Drive  
92122

###### **Oak Park**

2802 54<sup>th</sup> St.

92105

###### **Ocean Beach**

4801 Santa Monica Ave.  
92107

###### **Otay Mesa**

3003 Coronado Ave.  
92154

###### **Pacific Beach/Taylor**

4275 Cass St.  
92109

###### **Paradise Hills**

5922 Rancho Hills Dr.  
92139

###### **Point Loma**

2130 Pointsettia Dr.  
92107

###### **Rancho Bernardo**

17110 Bernardo Ctr. Dr.  
92128

###### **Rancho Penasquitos**

13330 Salmon River Road  
92129

###### **San Carlos**

7265 Jackson Drive  
92119

###### **San Ysidro**

101 W. San Ysidro Blvd  
92073

**Scripps Ranch**

10301 Scripps Lake Dr.  
92131

**Serra Mesa**

2440 Sandrock Road  
92123

**Skyline Hills**

480 S. Meadowbrook Dr.  
92114

**Tierrasanta**

4985 La Cuenta Dr.  
92124

**University Community**

4155 Governor Dr.  
92122

**University Heights**

4193 Park Blvd.  
92103

**Weingart/City Heights****Urban Village****Performance Annex**

3795 Fairmont Ave.  
92105

**City WAN Connection Site**

San Diego Data Processing Corporation  
5975 Santa Fe Street 92109

Education Access Channel 5

Locations: To be determined by the City

Education Access Channel 6

Locations: To be determined by the City

**Public Access**

Public Access Channel

Location: Grantee's Public Access Facility or Public Access Corporation Facility

**Additional Input Points**

Additional PEG Access Input Point 1 ..... To be determined by City

Additional PEG Access Input Point 2 ..... To be determined by City

**PEG CHANNEL ALIGNMENT**

City Government Access Channel 1 .....	Channel 24
City Government Access Channel 2 .....	Channel 22
Educational Access Channel 1 County Office of Education .....	Channel 23
Educational Access Channel 2 University of California .....	Channel 35
Educational Access Channel 3 San Diego State University .....	To Be Determined
Educational Access Channel 4 .....	To Be Determined
Educational Access Channel 5 .....	To Be Determined
Educational Access Channel 6 .....	To Be Determined
Public Access Channel .....	Channel 17